

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

J. N. HENDRICKSON,

9

Complainant,

vs.

EL CAMINO OIL COMPANY, LTD., a corporation,
Respondent.

STATE OF CALIFORNIA,

Creditor and Appellant,

vs.

H. A. MEEK, as Receiver of the El Camino Oil Company,
Ltd., a corporation,

Receiver and Appellee,

F. R. KENNEY and L. W. WICKES,

Creditors and Appellees.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

DEC 14 1936

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Solicitors.

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Los Angeles, California.

UNITED STATES OF AMERICA, SS.

TO H. A. MEEK, as Receiver of the El Camino Oil Company, Ltd., a corporation, and to F. R. KENNEY AND L. W. WICKES, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 30th day of October, A. D. 1936, pursuant to an order allowing the State of California an appeal, of record in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action entitled J. N. Hendrickson, Complainant, vs. El Camino Oil Company, Ltd., a corporation, Respondent, wherein the State of California is creditor and appellant and you are, respectively, receiver and appellee, and creditors and appellees, to show cause, if any there be, why the order appealed from by said State, as in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable George Cosgrave, United States District Judge for the Southern District of California, this 30th day of September, A. D. 1936, and of the Independence of the United States, the one hundred and sixty-first.

Geo. Cosgrave

U. S. District Judge for the Southern
District of California.

[Endorsed]: Received copy of the within Citation and copies of Assignment of Errors, Petition for Appeal, Order Allowing Appeal, filed herein this 30th day of Sept 1936. Earl Glen Whitehead Attorney for H. A. Meek, Receiver. A. Maxson Smith Attorney for F. R. Kenney & L. W. Wickes Filed Sept. 30, 1936 R. S. Zimmerman, Clerk, by Edmund L. Smith Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

J. N. HENDRICKSON,	)	NO. W-21-C
Complainant,	)	PETITION FOR
vs.	)	ORDER TO SHOW
EL CAMINO OIL COM-	)	CAUSE WHY CLAIM
PANY, LTD., a corpora-	)	FOR TAXES
tion,	)	SHOULD NOT BE
Respondent.	)	ALLOWED AS A
	)	PREFERRED CLAIM.

TO THE HONORABLE JUDGES OF THE DIS-
TRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF CALIFORNIA,
CENTRAL DIVISION:

The petition of the People of the State of California, by and through the Attorney General of said state, claimant in the above entitled action, respectively represents:

I.

That the said State of California heretofore duly filed with the receiver in the above entitled cause its claim against the above named respondent for taxes due said state in the sum of Two Hundred Ninety-one Thousand Twenty-five and 23/100 (\$291,025.23) Dollars on account of gasoline sold by respondent as a distributor in said State of California; that the laws of said state provide that such tax shall be a lien upon all property of the distributor, attaching at the time of delivery or distribution subject to said license tax, having the effect of an execution duly levied against all property of the distributor, and remaining until the license tax is paid or the property sold in payment thereof; that said claim was filed as a

preferred claim and as being a lien on the property of the respondent, all as set forth in said claim so filed with the receiver herein.

II.

That said receiver, through his counsel, has refused to allow said claim as a preferred or lien claim, or at all, notwithstanding the provisions of law making the same a preferred claim and creating a lien therefor.

III.

That your petitioner is informed and believes and therefore alleges that said receiver has on hand cash which is not required in the operation of said respondent corporation herein.

WHEREFORE, your petitioner prays that this court order said receiver to show cause, if any he has, in this court, at an hour and on a date to be appointed by the court, why he should not allow said claim as a preferred claim and as a lien claim prior to the claims of other creditors of the respondent, and why he should not distribute to the State of California on account of said claim the cash now in his hands and available for distribution, and for such other and further orders as to the court may seem just and proper in the premises.

U. S. WEBB,

Attorney General,

By John O. Palstine

Deputy Attorney General.

Attorneys for and on behalf of the People
of the State of California.

[Endorsed]: Filed Feb. 28, 1935 R. S. Zimmerman
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER TO SHOW CAUSE WHY PREFERRED
CLAIM OF STATE OF CALIFORNIA FOR
TAXES SHOULD NOT BE ALLOWED AND
DISTRIBUTION MADE TO SAID STATE.

Upon reading and filing the petition of the State of California for an order that the receiver in the above entitled action show cause before this court why he should not allow a certain claim for taxes filed by said state as a preferred and lien claim and why he should not distribute to said state on account of said claim the moneys in his hands available for distribution, and good cause appearing therefor,

IT IS ORDERED that H. A. Meek, receiver in the above entitled action, show cause, if any he has, before this court at 2 o'clock P. M. on the 11th day of March, 1935, or as soon thereafter as the matter can be heard by the court, in the courtroom of the Honorable Geo. Cosgrave, United States District Judge, in the Federal Building, Los Angeles, California, why the claim of the State of California for taxes heretofore filed with the said H. A. Meek, receiver, should not be allowed as a preferred claim and as a lien against the assets of the above named respondent, to be paid prior to claims of other creditors of the said respondent, and to then and there show cause, if any he has, why he should not distribute to said State of California on account of said

claim the moneys now in his hands and available for distribution.

IT IS FURTHER ORDERED that the petitioner, the People of the State of California, shall give days notice of this order to show cause, to the said receiver and the said respondent, by the service of a copy of the petition upon which this order is made and a copy of this order on the said receiver and respondent, or their counsel of record herein.

Dated: February 28, 1935.

Geo. Cosgrave

United States District Judge.

[Endorsed]: Filed Feb. 28, 1935 R. S. Zimmerman
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ANSWER TO ORDER TO SHOW CAUSE WHY
PREFERRED CLAIM OF STATE OF CALI-
FORNIA FOR TAXES SHOULD NOT BE AL-
LOWED AND DISTRIBUTION MADE TO
SAID STATE AND TO THE PETITION FOR
SUCH ORDER TO SHOW CAUSE.

Comes now H. A. MEEK, Receiver for the above named respondent and answering the petition of the State of California for an order to show cause admits, denies and alleges as follows, to-wit:

I.

Admits that the State of California duly filed a claim in the above entitled matter against the above named respondent for taxes alleged to be due from said respondent to the State of California. Admits that the amount claimed by the State of California as disclosed by the said claim filed is the sum of Two Hundred Ninety One Thousand Twenty Five and 23/100 (\$291,025.23) Dollars, but denies that the said sum so claimed is the true and correct amount of the alleged tax and penalty due, and in that connection alleges as disclosed by the records of the respondent the correct amount of taxes and penalties that should have been claimed by the State of California amounts to the sum of Two Hundred Eighty Three Thousand Fifty Two and 43/100 (\$283,052.43) Dollars. Alleges that of said sum of Two Hundred Eighty Three Thousand Fifty Two and 43/100 (\$283,052.43) Dollars, the sum of Thirty One Thousand Fifty One and 36/100 (\$31,051.36) Dollars is allegedly due as penalties on unpaid tax and that the sum of Two Hundred Fifty Two

Thousand One and 07/100 (\$252,001.07) Dollars is due to the State of California as and for unpaid balance of taxes.

II.

Admits that the law of the State of California purports to make said taxes a lien as set forth in Paragraph I of the petition of the State of California, but further alleges that said law does not provide that the same shall be a first lien, and that the Receiver is informed and believes that any lien created pursuant to the Gasoline Tax Law of the State of California is subsequent and subordinate to valid existing encumbrances.

III.

Answering Paragraph II of the petition of the State of California, the Receiver denies that he has refused to allow said claim of the State of California or to pass thereon and alleges that negotiations have been pending with the possible view of settling the rights of the State and the rights of the other lien holders as to the properties of the respondent company, and that it now appearing that no settlement is possible, the Receiver did in a report filed with the above entitled Court on March 12, 1935, set forth his ruling as to the claim of the State of California and did in said report set forth facts found by the Receiver in connection with the respective claim of the State of California and F. R. Kenney and L. W. Wickes as hereinafter set forth, to-wit:

On June 10, 1930, a trust deed was recorded which had been executed June 7, 1930, which was by the El Camino Oil Company, Ltd. as Trustor with F. R. Kenney and L. W. Wickes as Beneficiaries. This trust deed conveyed title to all properties of the El Camino Oil Company, Ltd.

at the refinery and at the bulk plant to the Title Insurance and Trust Company pursuant to the terms of the said trust agreement for the purpose of securing payment to the said beneficiaries of certain moneys due them as and for crude oil purchased by the El Camino Oil Company, Ltd. which amounted to approximately Ninety Thousand (\$90,000.00) Dollars. At this time there was nothing of record to show any liens superior to the said trust deed, which was given for a valuable and adequate consideration and in good faith. That thereafter certain interest has accrued in connection with the trust deed, all of which is secured by the said trust deed. The beneficiaries under the trust deed therefore claim a prior right in and to all properties of the El Camino Oil Company, Ltd. as security for the moneys due them.

The State of California has filed a claim with your Receiver amounting to the sum of Two Hundred Eighty Three Thousand Fifty Two and $43/100$ (\$283,052.43) Dollars, claiming said sum to be due as unpaid gasoline tax together with penalties. Said tax allegedly accrued under the terms of the Gasoline Tax Act of 1927 of the State of California. That attached hereto and made a part hereof and marked Exhibit "B" is a memorandum of delinquent gasoline tax showing due dates, payment and penalties which has been compiled from the records of the El Camino Oil Company, Ltd. which show that the unpaid tax amounts to the sum of Two Hundred Fifty Two Thousand One and $07/100$ (\$252,001.07) Dollars, and the penalties claimed amounting to the sum of Thirty

One Thousand Fifty One and $36/100$ (\$31,051.36) Dollars. That the records further disclose that at the time the said trust deed was executed and recorded there was due tax in the sum of Sixty Five Thousand (\$65,000.00) Dollars, which tax was subsequently reduced by series of payments leaving a balance unpaid of Sixteen Thousand Three Hundred Seventy Four and $61/100$ (\$16,374.61) Dollars. That the said tax as to which there is an unpaid balance of Sixteen Thousand Three Hundred Seventy Four and $61/100$ (\$16,374.61) Dollars became due on May 15, 1930. A tax in the sum of Ninety Two Thousand Seven Hundred Seventy Seven and $19/100$ (\$92,777.19) Dollars accrued as of June 30, 1930, which was payable August 15, 1930. Certain other taxes accrued which brings the total unpaid tax to the sum of Two Hundred Fifty Two Thousand One and $07/100$ (\$252,001.07) Dollars. That the said figure of Two Hundred Fifty Two Thousand One and $07/100$ (\$252,001.07) Dollars does not take into consideration the penalties claimed, nor does the said sum of Sixteen Thousand Three Hundred Seventy Four and $61/100$ (\$16,374.61) Dollars take into consideration money claimed as a penalty by the State of California. That as to the penalties claimed by the State, the Receiver rejects and disallows them in full. That as to the said sum of Sixteen Thousand Three Hundred Seventy-Four and $61/100$ (\$16,374.61) Dollars, which tax accrued and was due and unpaid prior to the time of the recording of the trust deed referred to, the Receiver approves this sum as a preferred claim and recommends that

the Court authorize and approve the payment of this sum immediately from funds now in the possession of the Receiver. That as to the tax claim of the State of California in the sum of Two Hundred Thirty Five Thousand Six Hundred Fifty Three and $46/100$ (\$235,653.46) Dollars, which is the remainder after the payment of the sum of Sixteen Thousand Three Hundred Seventy Four and $61/100$ (\$16,374.61) Dollars, the Receiver approves and allows the same as prior to the claims of the general creditors. That as heretofore ruled, the claim of F. R. Kenney and L. W. Wickes is a secured claim upon all properties of the Respondent Company, and that the rights of the said secured claimants in and to such properties are superior to the claim of the State of California, and that the claim of the State of California, if secured by any lien on the properties of the respondent company, is subject to the prior lien of the said F. R. Kenney and L. W. Wickes. That it is immaterial whether the claim of the State of California is secured or not inasmuch as it is the only prior claim and any moneys received by reason of the sale of the properties of the respondent company in excess of the claim of F. R. Kenney and L. W. Wickes, or other moneys, would be paid to the State of California by reason of priority of the State's claim before any funds could be disbursed to general creditors. That as heretofore pointed out, your Receiver and his attorney have engaged in several conferences with the representatives of the State of California in an effort to amiably adjust and determine the rights of the State of California in relation to the

said trust deed beneficiaries and have likewise engaged in several conferences with representatives of the trust deed beneficiaries. However, it has been definitely determined that it is impossible to submit any plan to the Court which would be satisfactory to all parties concerned. That the reason such plan is impossible is due to the fact that the Attorney General's Office of the State of California has ruled that it is impossible for the State to legally compromise or adjust any claims, even though the result might benefit the State.

IV.

Receiver further alleges as hereinbefore set forth and as was set forth in the Receiver's report that the Receiver has on hand certain moneys which are not necessary for the operation of the above named respondent corporation, and the Receiver recommends that he be authorized to pay to the State of California the sum of Sixteen Thousand Three Hundred Seventy Four and 61/100 (\$16,374.61) Dollars.

WHEREFORE, your Receiver prays that this Court dismiss the order to show cause heretofore issued in connection with the above entitled matter and for such other and further relief as to the Court may seem just and proper in the premises.

H. A. Meek
Receiver

Earl Glen Whitehead
Attorney for Receiver

STATE OF CALIFORNIA)
) SS
 COUNTY OF LOS ANGELES)

H. A. MEEK, being by me first duly sworn, deposes and says: That he is the Receiver in the above entitled matter; that he has read the foregoing Answer To Order To Show Cause Why Preferred Claim of State of California For Taxes Should Not Be Allowed And Distribution Made To Said State And To The Petition For Such Order To Show Cause and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters, that he believes it to be true.

H. A. Meek

Subscribed and sworn to before me this 19 day of March, 1935.

[Seal]

Earl Glen Whitehead

Notary Public in and for said County and State.

[Endorsed]: Filed Mar. 20, 1935 R. S. Zimmerman
 Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATED STATEMENT OF FACTS

IT IS HEREBY STIPULATED between the receiver for the above named company, and the People of the State of California, by and through the Attorney General of said State:

I.

That during all of the year 1930, and to and including April 7, 1931, said El Camino Oil Company, Ltd. was engaged in the business of refining, manufacturing, producing and compounding motor vehicle fuel in the State of California and selling the same in said State, and as such was subject to a motor vehicle fuel tax pursuant to the provisions of California Statutes 1923, p. 5719, as amended, and California Statutes 1927, p. 1565.

II.

That there was duly and regularly assessed by the State of California against said distributor pursuant to said Acts, and after March 31, 1930, a motor vehicle fuel tax in the sum of One Hundred Two Thousand Two Hundred Twenty and 90/100 (\$102,220.90) Dollars, for the first quarter of said year 1930, ended March 31, 1930; that said tax became delinquent at five o'clock P. M. on the 15th day of May, 1930, at which time a Ten (10%) Per Cent penalty in the amount of Ten Thousand Two Hundred Twenty Two and 09/100 (\$10,222.09) Dollars was added to said tax as provided in said Acts, and was entered upon the assessment roll by the Controller of the said State of California.

III.

That there was duly and regularly assessed by the State of California against said distributor pursuant to said Acts, and after June 30, 1930, a motor vehicle fuel tax in the sum of Ninety Two Thousand Eight Hundred Sixty Nine and 11/100 (\$92,869.11) Dollars for the second quarter of 1930, ended June 30, 1930; that said tax became delinquent at five o'clock P. M. on the 15th day of August, 1930, at which time a Ten (10%) Per Cent penalty in the amount of Nine Thousand Two Hundred Eighty-Six and 91/100 (\$9,286.91) Dollars was added to said tax as provided in said Acts, and was entered upon the assessment roll by said Controller.

IV.

That there was duly and regularly assessed by the State of California against said distributor pursuant to said Acts, and after September 30, 1930, a motor vehicle fuel tax in the sum of Forty Five Thousand Six Hundred Four and 88/100 (\$45,604.88) Dollars for the third quarter of 1930, ended September 30, 1930; that said tax became delinquent at five o'clock P. M. on the 15th day of November, 1930, at which time a Ten (10%) Per Cent penalty in the amount of Four Thousand Five Hundred Sixty and 49/100 (\$4,560.49) Dollars was added to said tax as provided in said Acts, and was entered upon the assessment roll by said Controller.

V.

That there was duly and regularly assessed by the State of California against said distributor pursuant to said Acts, and after March 31, 1931, a motor vehicle fuel tax in the sum of Ninety Seven Thousand Five Hundred

Seventy One and 72/100 (\$97,571.72) Dollars for the first quarter of 1931, ended March 31, 1931; that at five o'clock P. M. on the 15th day of May, 1931, the sum of Ninety Five Thousand Three Hundred Fifty Four and 20/100 (\$95,354.20) Dollars of said tax became delinquent, at which time a Ten (10%) Per Cent penalty in the amount of Nine Thousand Five Hundred Thirty Five and 42/100 (\$9,535.42) Dollars was added to said tax as provided in said Acts, and was entered upon the assessment roll by said Controller.

VI.

That since May 15, 1930, the following sums have been paid to the State of California by said El Camino Oil Company, Ltd. on the following dates:

May 27, 1930	\$22,220.90
June 2, 1930	5,000.00
June 3, 1930	5,000.00
June 11, 1930	5,000.00
June 16, 1930	5,000.00
July 1, 1930	10,000.00
July 15, 1930	10,000.00
July 22, 1930	5,000.00
Nov. 20, 1930	1,000.00
Nov. 22, 1930	1,000.00
Apr. 15, 1931	2,217.49
May 29, 1931	2,895.33
June 9, 1931	1,320.00
July 31, 1931	1,288.09
Aug. 7, 1931	1,137.73
Sept. 19, 1931	1,642.60
Oct. 14, 1931	1,563.30
Nov. 11, 1931	2,036.43
Dec. 12, 1931	935.00
Jan. 11, 1932	1,589.42

That no other payments have been made on account of the aforesaid taxes and penalties. That all of said payments except the aforesaid payments made on April 15, 1931, and on May 29, 1931, were made to the State Controller of the State of California without instructing the said Controller as to how said sums should be applied upon the indebtedness of said company to the State of California; that said State Controller credited said sums so paid without instructions as to their application, upon the assessment roll showing the tax and penalty for the aforesaid first quarter of the year 1930; that there was thus credited the total sum of Eighty Thousand Seven Hundred Thirty Three and $47/100$ (\$80,733.47) Dollars; that said State Controller did not designate upon said *said* assessment roll whether said payments were credited upon said penalty item or upon said principal tax items shown upon said roll.

That said payments of April 15, 1931, and May 29, 1931, in the total sum of Five Thousand One Hundred Twelve and $82/100$ (\$5,112.82) Dollars, were made to the State Controller of the State of California with instructions to apply the same on account of said aforesaid tax assessed for the first quarter of the year 1931; that said State Controller credited said payments in the total sum of Five Thousand One Hundred Twelve and $82/100$ (\$5,112.82) Dollars upon the assessment roll showing the tax and penalty for the aforesaid first quarter of the year 1931; that no payments have been made or credited on account of the aforesaid taxes or penalties thereon for the second and third quarters of the year 1930.

VII.

That on and prior to the 7th day of June, 1930, said El Camino Oil Company, Ltd. was indebted to F. R. Kenney and L. W. Wickes for crude oil theretofore purchased under the terms of a written contract, and that on or about June 7, 1930, said El Camino Oil Company, Ltd. made, executed and delivered two promissory notes in the amounts of Eighty Thousand (\$80,000.00) Dollars and Ten Thousand (\$10,000.00) Dollars respectively, payable to F. R. Kenney and L. W. Wickes on demand and bearing interest at Seven (7%) Per Cent per annum compounded quarterly. That copies of said notes together with the instruments securing the same are attached hereto and made a part hereof. That for the purpose of securing payment to said F. R. Kenney and L. W. Wickes of the moneys due them as evidenced by said Eighty Thousand (\$80,000.00) Dollars promissory note, a trust deed was made, executed and delivered by said El Camino Oil Company, Ltd. on said 7th day of June, 1930, conveying to the Title Insurance and Trust Company title to the property as set forth in the said trust deed, a copy of which is attached hereto; that said trust deed was recorded on June 10, 1930, in Book 10022, page 233 of Official Records of the County Recorder's office of Los Angeles County. That said Ten Thousand (\$10,000.00) Dollars promissory note was secured by a chattel mortgage made, executed, and delivered by said El Camino Oil Company, Ltd. on or about said 7th day of June, 1930, covering and mortgaging certain trucks and equipment as more particularly set forth in said mortgage, a copy of which is attached hereto. That at the time said instruments were made, executed, and delivered, the exact balance due said F. R. Kenney and L. W. Wickes from

the El Camino Oil Company, Ltd. was not known, said crude oil contracts being "realization contracts", but said notes and securities were made in the aforesaid amounts in order to amply cover the indebtedness which would thereafter be fixed by said parties; that thereafter an accounting was had whereby it was determined that as of said 7th day of June, 1930, said El Camino Oil Company, Ltd. was indebted to said F. R. Kenney and L. W. Wickes in the sum of Seventy Eight Thousand Forty Six and 60/100 (\$78,046.60) Dollars only.

VIII.

That from the 1st day of April, 1930, to and including the 6th day of June, 1930, said El Camino Oil Company, Ltd. refined, manufactured, produced, and compounded two million three hundred seventy four thousand four hundred sixty one (2,374,461) gallons of motor vehicle fuel in the State of California and sold the same in said state, which sales were taxable under the provisions of said California Motor Vehicle Tax Acts, and which sales, together with the other taxable sales by said company during said quarter, were thereafter, and after June 15, 1930, pursuant to the provisions of said acts, reported by said El Camino Oil Company, Ltd. to the State Board of Equalization of said state; that thereafter and pursuant to said acts and after June 15, 1930, a motor vehicle fuel tax in the amount of Ninety Two Thousand Eight Hundred Sixty Nine and 11/100 (\$92,869.11) Dollars was duly and regularly assessed against said El Camino Oil Company, Ltd. upon the basis of said motor vehicle fuel refined, manufactured, produced, and compounded by said company and sold by it in said State of California during said second quarter of 1930; that of said tax so assessed

in the sum of Ninety Two Thousand Eight Hundred Sixty Nine and 11/100 (\$92,879.11) Dollars, the sum of Seventy Thousand *Four* Hundred Twenty One and 49/100 (\$70,521.49) Dollars was based upon said sales and distributions made during the period from April 1, 1930, to and including June 6, 1930, as aforesaid.

IX.

That from the 1st day of April, 1930, to and including the 9th day of June, 1930, said El Camino Oil Company, Ltd. refined, manufactured, produced, and compounded two million four hundred ninety one thousand seven hundred forty three (2,491,743) gallons of motor vehicle fuel in the State of California and sold the same in said state, which sales were taxable under the provisions of said California Motor Vehicle Tax Acts, and which sales, together with the other taxable sales by said company during said quarter, were thereafter, and after June 15, 1930, pursuant to the provisions of said acts, reported by said El Camino Oil Company, Ltd. to the State Board of Equalization of said state; that thereafter and pursuant to said acts, and after June 15, 1930, a motor vehicle fuel tax in the amount of Ninety Two Thousand Eight Hundred Sixty Nine and 11/100 (\$92,879.11) Dollars was duly and regularly assessed against said El Camino Oil Company, Ltd. upon the basis of said motor vehicle fuel refined, manufactured, produced, and compounded by said company and sold by it in said State of California during said second quarter of 1930; that of said tax so assessed in the sum of Ninety Two Thousand Eight Hundred Sixty Nine and 11/100 (\$92,879.11) Dollars, the sum of Seventy Four Thousand Four and

77/100 (\$74,004.77) Dollars was based upon said sales and distributions made during the period from April 1, 1930, to and including June 9, 1930, as aforesaid.

X.

It is further stipulated that all assessments made by the State of California against the El Camino Oil Company, Ltd. as hereinbefore set forth, were duly and regularly made by the State Board of Equalization which prepared and completed an assessment roll showing the amount of the license tax assessed against each distributor. That immediately thereafter said Board of Equalization delivered said assessment roll to the State Controller. That a true copy of the assessment rolls showing the assessments made against the El Camino Oil, Ltd., as aforesaid are attached hereto and made a part hereof.

It is further stipulated that the description of no property was at any time set forth on any of said assessment rolls.

XI.

It is further stipulated that on May 29, 1931, there was filed in the Superior Court of the State of California, in and for the County of Los Angeles, an action entitled The People of the State of California, Plaintiff, vs. El Camino Oil Company, Ltd., Defendant, said action being numbered 322375, and said action being filed for the purpose of recovering moneys alleged to be due from the defendant therein to the State of California as and for unpaid taxes due upon sales of gasoline made by the defendant therein. That a true copy of the said complaint is attached hereto and made a part hereof.

XII.

That thereafter, and on or about June 30, 1931, a stipulation was entered into in connection with the above referred to Superior Court action, a copy of which is attached hereto and made a part hereof. That said stipulation has not been filed in said action nor has any judgment been given or entered pursuant thereto.

XIII.

It is further stipulated that in stipulating to the foregoing facts, neither party hereto is stipulating as to the legal effect of said facts, and it is further stipulated that additional evidence may be introduced by either party in the event the same is material and appurtenant to the issues.

DATED: May , 1935.

U. S. Webb, Attorney General
By John O. Palstine, Deputy
Earl Glen Whitehead

Attorney for the Receiver

CHATTEL MORTGAGE

THIS MORTGAGE made this 6th day of June, 1930, by EL CAMINO OIL COMPANY, LTD., a Nevada corporation, with its principal place of business in the city of Los Angeles, state of California, to F. R. KENNEY and L. W. WICKES, of the city and county of Los Angeles, state of California,

WITNESSETH:

That the said Mortgagor mortgages to the said Mortgagees all that certain personal property situated in the county of Los Angeles and described as follows:

Make and Description	Engine No.	Purchased From	1930 California License No.	
Ford Stake Body Truck	14579703	El Camino Oil Co.		6P33-87
G. M. C. 3-Compartment Tank Truck	2053207	" " " "		PcC98-01
Republic 3-Compartment Tank Truck	CT 21636	" " " "		PcD82-00
Dodge Delivery Body	A 262067	Tucker & Fagan		2X3355
Ford Compartment Tank Truck	AA2280844	Pacific Oil & Ref. Co.		PcB26-91
G. M. C. 4-Compartment Tank Truck	845002	El Camino Oil Co.		PcC99-19
G. M. C. 4-Compartment Tank Truck	893444	" " " "		PcC9803
Sterling 1-Compartment Tank Truck	192979	" " " "		PcD8199
Utility 1-Compartment Tank Trailer	6757	" " " "		PT39-572
Sterling 1-Compartment Tank Truck	13106	" " " "		PcC98-02
Sterling 1-Compartment Tank Truck	203692	Sterling Motor Tr.		PcD81-98
Utility 1-Compartment Tank Trailer	6977	Utility Trailer Sales		PT39573
Nash Cabriolet	A38808	El Camino Oil Co.		6P33-83
Nash Coupe	353157	" " " "		— — —
Ford Light Delivery Body	A2388899	Hubbard Auto Sales		6P3386
Ford Standard Coupe	A2334193	" " " "		6P3385
Ford Sport Coupe	A2638816	Noll Auto Co.		4V 64-48
Ford Standard Coupe	A2706089	" " " "		4V 65-41
Ford Standard Coupe	A2870480	" " " "		— — —

as security for the payment to said F. R. Kenney and said L. W. Wickes, the said Mortgagees, of \$10,000.00 gold coin of the United States of America, with interest at the rate of 7% per annum according to the terms and conditions of a certain Promissory Note of even date herewith and in words and figures as follows, to-wit:

\$10,000.00 Los Angeles, California, June 6th, 1930.

On demand, for value received, I, El Camino Oil Company, Ltd., a corporation, promise to pay to F. R. Kenney and L. W. Wickes, or order, at Los Angeles, California, the sum of Ten Thousand Dollars, with interest at the rate of seven per cent. (7%) per annum from date until paid, interest payable quarterly and if not so paid, to be compounded quarterly and bear the same rate of interest as the principal. Principal and interest payable in gold coin of the United States. If suit or action shall be instituted in any court to collect any sum becoming due on this note, the undersigned promises to pay such sum as the court may adjudge reasonable as attorney's fees in said court or action. This note is secured by a chattel mortgage of even date herewith.

EL CAMINO OIL COMPANY, LTD.,

By Joseph M. Devere

President

[Corporate Seal]

By Alfred Barstow

Secretary

It is also agreed that if the mortgagor shall fail to make any payment as in the promissory note provided, then the mortgagees may take possession of the said personal prop-

erty, using all necessary force so to do and may immediately proceed to sell the same in the manner provided by law and from the proceeds pay the whole amount of said note specified or so much of the same as said proceeds will pay and all costs of sale, including reasonable counsel fees in an amount to be fixed by Court, paying the overplus to the said mortgagor, all of said costs, including said counsel fees, being hereby secured.

The said mortgagor does hereby state, declare and warrant that it is the sole and separate owner of all the within mentioned personal property and that there are no liens or encumbrances or adverse claims of any kind whatever on any part thereof, except as follows:

Make	1930 California License No.				Amount
Ford & Paint Compr. Outfit	6P33-87	Subject to contract	C. I. T. Corporation	\$	219.70
Ford	PcB26-91	"	"	"	Comm'l Credit Co. 429.00
Sterling	PcD8199	"	"	"	Sterling Motor T. Co. 1,890.56
Utility Trailer	PT39-572	"	"	"	Utility Trailer S. Co. 664.05
Sterling	PcC98-02	"	"	"	Sterling Motor T. Co. 1,575.69
Sterling	PcD81-98	"	"	"	Sterling Motor T. Co. 4,176.00
Utility Trailer	PT39573	"	"	"	Utility Trailer S. Co. 2,959.28
Ford Sport Coupe	4V 64-48	"	"	"	Noll Auto Co. 441.00
Ford Standard Coupe	4V 65-41	"	"	"	" " " 441.00
Ford Standard Coupe		"	"	"	" " " 497.76

Subscribed and sworn to before me, by L. W. Wickes,
this 9th day of June, 1930

(Signed) Neil C. Cross

[Seal] Notary Public in and for said County and State

Subscribed and sworn to before me, by H. B. Duchand,
as Attorney in Fact for F. R. Kenney, this 9th day of
June, 1930.

(Signed) Effie D. Botts

[Seal] Notary Public in and for said County and State

Deed of Trust Securing—Straight Note

This Deed of Trust, Made this 7th day of June, 1930,
Between EL CAMINO OIL COMPANY, LTD.,
a corporation, (formerly El Camino Oil Company, a cor-
poration), organized and existing under and by virtue of
the laws of the State of Nevada, herein called TRUSTOR,
Title Insurance and Trust Company a Corporation, of
Los Angeles, California, herein called Trustee, and F. R.
KENNEY and L. W. WICKES, herein called BENE-
FICIARY, Witnesseth: That Trustor hereby GRANTS to
TRUSTEE, IN TRUST, WITH POWER OF SALE,
all that property in the City of Los Angeles County of
Los Angeles, State of California, described as:

PARCEL I: Lot Nine (9), Block F, Tract 6482, as per
Book 86, Pages 72-73 of Maps, Records of Los Angeles
County, State of California;

and also Trustor hereby grants, conveys, transfers, assigns
and sets over to Trustee, in trust, with power of sale, all

that property in the County of Los Angeles, State of California, described as:

All Trustor's right, title and interest, as Lessee, in and to that certain written lease dated September 16, 1929 between Matilda E. Richer, Lessor, and El Camino Oil Company, a corporation, Lessee, pertaining to and covering

PARCEL II: The West Five (5) acres of the North Fourteen (14) acres of the East Fifty-five (55) acres of the South Half ($S\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) of Section 8, Township 3 South, Range 11 West, San Bernardino Base and Meridian.

which said lease was recorded on the 24th day of September, 1929 in Book 9300, page 229 of Official Records in the office of the County Recorder of Los Angeles County, State of California, including Trustor's right under said lease to purchase said premises upon the terms and conditions set forth in said lease.

Said grant, transfer, and assignment of said Trustor's interest, as Lessee, in and to said lease is hereby made to said Trustee upon the express understanding and agreement between Trustor and Trustee that Trustee is not to be liable upon any of the covenants, obligations and requirements of said lease.

It is expressly understood and agreed that all that certain oil refinery located upon Parcel II above described and all that certain bulk plant located upon Parcel I above described, including all machinery, equipment and fixtures and all tanks, vats, pumps, boilers, engines, meters, pipes, stills, and fractionating towers now situated upon the above described premises, or either of them, in whatever manner affixed or attached to either of said parcels of

real property, are and shall be deemed to be real property and expressly included in the above grant, transfer and assignment.

FOR THE PURPOSE OF SECURING:

FIRST. An indebtedness of the Trustor to the Beneficiary in the sum of Eighty Thousand Dollars (\$80,000.00) in Gold Coin of the United States of the present standard of weight, fineness and value, evidenced by a certain promissory note of even date herewith (and any renewal or extension thereof), which said indebtedness the said Trustor has agreed to repay with interest thereon to the said Beneficiary, or to their order, in like Gold Coin according to the terms of said promissory note executed and delivered by said Trustor to said Beneficiary contemporaneously herewith, and which said note for the purpose of identification has been registered by the Beneficiary with the Trustee.

TITLE INSURANCE AND TRUST COMPANY,
433 So. Spring Street, Los Angeles, California

KERN COUNTY OFFICE
1715 Chester Avenue, Bakersfield

SANTA BARBARA OFFICE
14 East Carrillo Street, Santa Barbara

SAN LUIS OBISPO OFFICE
998 Monterey Street, San Luis Obispo

\$....., California,.....,19.....
.....after date, for
value received,.....
.....promise... to pay to
.....

....., or order, at

 the sum of.....DOLLARS,
 with interest from.....until paid, at the rate of
per cent per annum, payable.....

Should interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest payable in United States gold coin. If suit or action shall be instituted in any Court to collect any sum becoming due on this note, the undersigned promise to pay such sum as the Court may adjudge reasonable as attorney's fees in said suit or action. This note is secured by a DEED OF TRUST to TITLE INSURANCE AND TRUST COMPANY, a corporation, of Los Angeles, California.

.....

SECOND. Payment and/or performance of every obligation, covenant, promise or agreement herein and/or in said note contained.

TO HAVE AND TO HOLD SAID PROPERTY UPON THE FOLLOWING EXPRESS TRUSTS, TO-WIT:

A. Trustor promises and agrees, during continuance of these Trusts:

1. For the purpose of protecting and preserving the security of this Deed of Trust: (a) to properly care for and keep said property in good condition and repair;

(b) not to remove or demolish any building thereon; (c) to complete in a good and workmanlike manner any building which may be constructed thereon, and to pay when due all claims for labor performed and materials furnished therefor; (d) to comply with all laws, ordinances and regulations requiring any alterations or improvements to be made thereon; (e) not to commit or permit any waste or deterioration thereof; (f) not to commit, suffer or permit any act to be done in or upon said property in violation of any law or ordinance; (g) to cultivate, irrigate, fertilize, fumigate, prune and/or do any other act or acts, all in a timely and proper manner, which, from the character or use of said property, may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

2. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire insurance policy shall be credited first, to accrued interest; next, to expenditures hereunder and any remainder upon the principal, and interest shall thereupon cease upon the amount so credited upon principal; provided, however, that at option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor, without liability upon Trustee for such release.

3. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary and/or Trustee may appear.

4. To pay: (a) before delinquency, all taxes and assessments affecting said property, (including assessments on appurtenant water stock), and any costs or penalty thereon; (b) when due, all incumbrances (including any debt secured by Deed of Trust) and/or interest thereon, which appear to be liens or charges upon said property or any part thereof prior to this Deed of Trust; (c) all costs, fees and expenses of these Trusts, including cost of evidence of title and Trustee's fees in connection with sale, whether completed or not, which amounts shall become due upon delivery to Trustee of Declaration of Default and Demand for Sale, as hereinafter provided.

5. To pay without demand, all sums expended by Trustee or Beneficiary under the terms hereof with interest from date of expenditure at the rate of ten per cent per annum.

B. Should Trustor fail or refuse to make any payment or do any act, which he is obligated hereunder to make or do, at the time and in the manner herein provided, then Trustee and/or Beneficiary, each in his sole discretion, may, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof:

1. Make or do the same in such manner and to such extent as may be deemed necessary to protect the security of this Deed of Trust, either Trustee or Beneficiary being authorized to enter upon and take possession of said property for such purposes.

2. Commence, appear in or defend any action or proceeding affecting or purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder, whether brought by or against Trustor, Trustee or Beneficiary; or

3. Pay, purchase, contest or compromise any prior claim, debt, lien, charge or incumbrance which in the judgment of either may affect or appear to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder.

Provided, that neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts above mentioned, but, upon election of either or both so to do, employment of an attorney is authorized and payment of the fees of such attorney in a reasonable sum is hereby secured.

C. Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Trustor, Beneficiary and/or Trustee shall be named as defendant, unless brought by Trustee.

D. Acceptance by Beneficiary of any sum in payment of any indebtedness secured hereby, after the date when the same is due, shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums so secured or to declare default as herein provided for failure so to pay.

E. Trustee may, at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said property:

1. Reconvey any part of said property;
2. Consent in writing to the making of any map or plat thereof; or
3. Join in granting any easement thereon.

F. Upon payment of all sums secured hereby and surrender to Trustee, for cancellation, of this Deed of Trust and the note secured hereby Trustee, upon receipt from Beneficiary of a written request reciting the fact of such payment and surrender, shall reconvey, without warranty, the estate then held by Trustee, and the Grantee in such reconveyance may be described in general terms as "the person or persons legally entitled thereto," and Trustee is authorized to retain this Deed of Trust and such note. The recitals in such reconveyance of any matters or facts shall be conclusive proof against all persons of the truthfulness thereof.

G. 1. Should breach or default be made by Trustor in payment of any indebtedness secured hereby and/or in performance of any obligation, covenant, promise or agreement herein, or in said note contained, then Beneficiary may declare all sums secured hereby immediately due by the execution and delivery to Trustee of a written Declaration of Default and Demand for Sale, whereupon all sums secured hereby shall become and be immediately due and payable, and shall surrender to Trustee this Deed of Trust, the note and receipts or other documents evidencing any expenditures secured thereby.

Beneficiary shall also execute and deliver to Trustee a written notice of such breach or default and of his election to cause to be sold the herein described property to satisfy the obligations hereof, and thereafter Trustee shall cause such notice to be recorded in the office of the recorder of the county or counties wherein said real property or some part thereof is situated.

Beneficiary, from time to time before Trustee's sale, may rescind any such notice of breach or default and of election to cause to be sold said property by executing and

delivering to Trustee a written notice of such rescission, which notice, when recorded in the office of the recorder of the aforesaid county or counties, shall also constitute a cancellation of any prior Declaration of Default and Demand for Sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default, then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other Declarations of Default and Demand for Sale, and notices of breach or default and of election to cause to be sold said property to satisfy the obligations hereof, nor otherwise affect any provision, covenant or condition of said note and of this Deed of Trust or any of the rights, obligations or remedies of the parties thereunder.

2. After three months shall have elapsed following recordation of any such notice of breach or default and of election to cause to be sold said property, as to which no notice of rescission has been recorded, Trustee, without demand on Trustor, shall sell said property, as herein provided, at such time and at such place in the State of California as the Trustee, in its sole discretion, shall deem best to accomplish the objects of these Trusts, having first given notice of the time and place of such sale in the manner and for a time not less than that required by the laws of the State of California for sales of real property under Deeds of Trust.

3. Trustee may postpone sale of all, or any portion, of said property by public announcement at the time fixed by said notice of sale, and may thereafter postpone said sale from time to time by public announcement at the time fixed by the preceding postponement: and without further notice it may make such sale at the time to which

the same shall be so postponed, provided, however, that the sale or any postponement thereof must be made at the place fixed by the original notice of sale.

4. At the time of sale so fixed, Trustee may sell the property so advertised, or any part thereof, either as a whole or in separate parcels at its sole discretion, at public auction, to the highest bidder for cash in United States gold coin, all payable at time of sale, and after any such sale and due payment made, shall execute and deliver to such purchaser a deed or deeds conveying the property so sold, but without covenant or warranty, express or implied, regarding title, possession or incumbrances. Trustor hereby agrees to surrender immediately and without demand possession of said property to such purchaser. The recitals in such deed or deeds of any matters or facts affecting the regularity or validity of said sale shall be conclusive proof of the truthfulness thereof and such deed or deeds shall be conclusive against all persons as to all matters or facts therein recited. Trustee, Beneficiary, any person on behalf of either or any other person, may purchase at such sale.

H. Trustee shall apply the proceeds of any such sale to payment of:

1. (a) Expenses of sale; (b) all costs, fees, charges and expenses of Trustee and of these Trusts, including cost of evidence of title and Trustee's fee in connection with sale;

2. All sums expended under the terms hereof, not then repaid, with accrued interest at the rate of ten per cent per annum;

3. Accrued interest on said note;

4. Unpaid principal of said note; or if more than one, the unpaid principal thereof pro rata and without preference or priority; and

5. The remainder if any to the person or persons legally entitled thereto, upon proof of such right.

I. This Deed of Trust in all its parts applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

J. Trustee accepts these Trusts when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

In Witness Whereof Trustor has executed this instrument.

EL CAMINO OIL COMPANY, LTD.

By (Signed) Joseph M. Devere, President

By (Signed) Alfred Barstow, Secretary

.....
.....

STATE OF CALIFORNIA }
COUNTY OF Los Angeles } ss.

On this 7th day of June, 1930, before me, MARGARET HOWLETT, a Notary Public in and for said County, personally appeared Joseph M. Devere and Alfred Barstow, known to me to be the President and Secretary, re-

spectively, of EL CAMINO OIL COMPANY, LTD., the corporation which executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

(Notarial Seal)

My commission expires March 28, 1934

(Signed) MARGARET HOWLETT

Notary Public in and for said County and State.

Indexed as Trust Deed, Assignment of Lease and Chattel Mortgage

(This Deed of Trust may be executed by a corporation, in which case the corporation form of acknowledgment must be used.)

NOTE—DO NOT DETACH OR RECORD THIS FORM which is to be used ONLY when note is paid and Reconveyance of this Deed of Trust is requested.

A reconveyance will be issued ONLY upon presentation to TITLE INSURANCE AND TRUST COMPANY of this request properly signed and accompanied by the reconveyance fee, the Deed of Trust, the original note or notes secured by said Deed of Trust, and any receipt or document evidencing any other indebtedness secured thereby. In case of partial reconveyance use special form for that request and present Deed of Trust, together with the note or notes secured thereby to the Trustee for endorsement.

Register No. 36601
 DEED OF TRUST
 WITH POWER OF SALE
 Straight Note
 EL CAMINO OIL COMPANY Ltd.
 a corporation,
 TO
 TITLE INSURANCE AND TRUST COMPANY
 AS TRUSTEE FOR
 F. R. KENNEY and L. W. WICKES
 Dated.....19.....

TITLE INSURANCE AND TRUST COMPANY
 433 South Spring Street, Los Angeles, Calif.
 Kern County Office
 1715 Chester Avenue, Bakersfield
 Santa Barbara Office
 14 East Carrillo Street, Santa Barbara
 San Luis Obispo Office
 998 Monterey Street, San Luis Obispo

Union Title Insurance Co.
 1028 Second Street, San Diego
 Ventura Abstract Company
 429 Main Street, Ventura
 Tulare County Abstract Co.
 204 West Main Street, Visalia
 Riverside Title Company
 940 Main Street, Riverside

RECORDER'S PRINTED FORM 117
 Order No. 1530
 Escrow No.

WHEN RECORDED PLEASE MAIL TO:
 Newlin & Ashburn 935 Rowan Bldg. L. A.

Recorded June 10, 1930, 5 min. past 4 p. m. in Book
 10022 at Page 233 of Official Records Los Angeles County,
 Cal. C. L. Logan County Recorder

I hereby certify that I have correctly transcribed this
 document in above mentioned book. (Signed) M. Gorline
 #64 Compared Document Fitzmeier Book Kingsbury.

[TITLE OF COURT AND CAUSE.]

STIPULATION FOR ENTRY OF JUDGMENT

WHEREAS, The People of the State of California, plaintiff in the above entitled action, have heretofore filed suit in the Superior Court of Los Angeles County against El Camino Oil Company, Ltd., a corporation, the defendant above named, for the sum of \$297,537.80, representing motor vehicle fuel taxes duly levied and assessed, together with a penalty for non-payment thereof; and

WHEREAS, defendant acknowledges that said above mentioned amount is justly and legally due from defendant to plaintiff; and

WHEREAS, defendant is desirous of paying said amount in installments pursuant to arrangements heretofore made with the controller of the State of California;

NOW THEREFORE, IT IS HEREBY UNDERSTOOD, AGREED AND STIPULATED by defendant that any time deemed necessary by plaintiff's legal representatives, judgment may be entered herein for the amount above mentioned, less any payments made thereon subsequent to the filing of this action, with interest at the rate of seven per cent per annum (7%) from the date of judgment, and for costs of suit, findings of fact and conclusions of law being hereby waived.

IT IS FURTHER UNDERSTOOD, AGREED AND STIPULATED that nothing herein contained shall in any

manner affect any right or remedy of the plaintiff herein in respect to said action or any proceedings in connection therewith.

IN WITNESS WHEREOF, this stipulation has been signed this 30th day of June, 1931, by defendant through its representatives thereunto duly authorized.

EL CAMINO OIL COMPANY, LTD.,

By

President.

By

Secretary.

U. S. WEBB

.....

Attorney General.

H. H. LINNEY

.....

Deputy Attorney General.

.....

.....

Attorney for Def.

[Endorsed]: Filed May 20, 1935 R. S. Zimmerman
Clerk By Francis E. Cross, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION AS TO ADDITIONAL FACTS.

IT IS HEREBY STIPULATED by the Receiver for the above named company and the People of the State of California by and through its Attorney General of the said State in addition to the stipulation heretofore filed in the above entitled matter as follows:

That the El Camino Oil Company, Ltd. has not been at any of the times mentioned in the stipulation heretofore filed herein and is not now the owner of the real property described as Parcel II in said Deed of Trust dated June 7, 1930, and on which parcel is located the oil refinery of the said El Camino Oil Company, Ltd. That the only right, title or interest of said company in and to said premises was and is under and by virtue of that certain lease dated September 16, 1929, referred to in said Deed of Trust and under the substituted lease hereinafter referred to. That a true and correct copy of the said lease is attached hereto, made a part hereof and marked Exhibit "A".

That after the execution of the said lease and after the appointment of the Receiver herein, a new lease was substituted in place and instead of the lease attached hereto and marked Exhibit "A", and that a true copy of the said new lease is attached hereto and marked Exhibit "B".

That at the time the said Exhibit "A" was made, executed and delivered, said premises were vacant and unimproved. That thereafter and prior to the date of

any of the distributions for which taxes are levied, as set forth in said stipulation heretofore filed, said El Camino Oil Company, Ltd. erected and installed said refinery plant and equipment. That all of the property now in the possession of the Receiver herein (except repairs and replacements) was at all times during which the aforesaid distributions were made by the said El Camino Oil Company, Ltd. owned by the said company or were in the possession and use of the said company under conditional sales contracts reserving title in the conditional vendor for the purpose of security until payment in full of the purchase price, or were in the possession and use of and by said company under contracts designated Lease Contracts, which provided for the purchase of the said property by the company upon complying with the terms and conditions of the said contract. That attached hereto, made a part hereof, and marked Exhibit "E" is a Lease Contract which is typical in its form and provisions of all of the said lease contracts referred to herein.

That attached hereto and made a part hereof and marked Exhibit "C" is a schedule showing property in possession of the said El Camino Oil Company, Ltd. on June 7, 1930, which property was being purchased under conditional contracts of sale. Said schedule further shows the date of the contracts relating to the purchase of the said property, the total price and the balance due as of June 7, 1930. Said schedule further sets forth property in possession of the said El Camino Oil Company, Ltd. pursuant to lease contracts and the date of the said con-

tracts, the total price and the balance unpaid on June 7, 1930.

That attached hereto and made a part hereof and marked Exhibit "D" is a schedule showing the condition of the said conditional sales contracts and lease contracts as of March 31, 1931. That the said Exhibit "D" further sets forth the payments on the said contracts between March 31, 1931, and the appointment of the Receiver herein and further sets forth the balance due at the date of the receivership which has been paid by the Receiver. That all balances due on the said contracts have now been paid, and that title to the said property is now in the said El Camino Oil Company, Ltd. or the Receiver for the said company.

That the moneys paid by the Receiver on account of the said contracts were receipts from the operation of the said refinery by the lessee thereof as shown in the reports and accompanying accounts filed by the Receiver herein. That the Chattel Mortgage dated June 6, 1930, a copy of which is attached as an exhibit to the aforesaid stipulation of facts heretofore filed herein was recorded on June 10, 1930, in Book 10042, Page 186 of Official Records in the Office of the County Recorder of Los Angeles County, California. That at no times has there been any transfer of possession by the said El Camino Oil Company, Ltd. of any of the properties described in the said Deed of Trust to the beneficiaries named therein or of any of the properties described in said Chattel Mortgage

to the mortgagees named therein, the said El Camino Oil Company, Ltd. having been continuously in possession of all of said property at all times mentioned herein until possession of the same was taken by the Receiver herein.

DATED: September 30th, 1935.

Earl Glen Whitehead
Attorney for Receiver

U. S. WEBB,
Attorney General

By John O. Palstine
Attorneys for Claimant

The undersigned, attorneys for F. R. KENNEY and L. W. WICKES, beneficiaries under the Deed of Trust referred to in the foregoing stipulation and Mortgagees under the Chattel Mortgage referred to in the foregoing stipulation, hereby on behalf of the said Beneficiaries and Mortgagees join in the foregoing stipulation and also hereby on behalf of the said Beneficiaries and Mortgagees join in the aforesaid stipulation of facts heretofore filed herein and signed by the attorney for the Receiver herein and for the People of the State of California, Claimant herein.

DATED: September 30th, 1935.

W J. Kenney
Orrick, Palmer & Dahlquist.

Attorneys for F. R. Kenney and L. W. Wickes

EXHIBIT "A"

LEASE OF REAL PROPERTY

This indenture made the 16th day of September, 1929, between MATILDA E. RICHER, of the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the lessor, which expression, where the context so admits, shall include her executors, administrators, heirs and assigns, of the first part, and EL CAMINO OIL COMPANY, a corporation, of the other part, witnesseth:

1. In consideration of the rent and the lessee's covenants hereinafter reserved and contained the lessor hereby demises and leases unto the lessee that certain piece or parcel of land, situated, lying and being in the County of Los Angeles, State of California, particularly described as follows, to-wit:

The West Five (5) acres of the North Fourteen (14) acres of the East Fifty-five (55) acres of the South half ($S\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) of Section 8, Township 3 South, Range 11 West, San Bernardino Base and Meridian.

To have and to hold the said lands and premises for and during the term of ten (10) years from the 16th day of September, 1929.

Yielding and paying therefor the yearly rent of TWO THOUSAND FOUR HUNDRED DOLLARS (\$2-400.00) for the first two years of this lease, in quarter-yearly installments, each in advance, of SIX HUNDRED DOLLARS (\$600.00) each, at the office of the lessor's agent, LEO M. DALY, 319 Chester Williams Building,

215 West Fifth Street, Los Angeles, California, or at such other place as the lessor may from time to time designate in writing, on the 16th days of September, December, March and June of each of the first two years of said term, and thereafter the yearly rent of THREE THOUSAND DOLLARS (\$3000.00) for the next three (3) years of this lease, in quarter-yearly installments of SEVEN HUNDRED FIFTY DOLLARS (\$750.00) each, at the place aforesaid, on the 16th days of September, December, March and June of each of the next three (3) years of said term and thereafter the yearly rent of THREE THOUSAND and SIX HUNDRED DOLLARS (\$3600.00) for the next five (5) years of said term, in quarter-monthly installments of NINE HUNDRED DOLLARS (\$900.00) each, at the place aforesaid, on the said 16th days of September, December, March and June of each of the last five years of said term.

2. The lessee, to the intent that the obligations may continue throughout the term hereby created, covenants with the lessor as follows:

(1) To pay the rent reserved on the days and in the manner aforesaid.

(2) To bear, pay and discharge all taxes, assessments, duties, impositions, and burdens whatsoever assessed, charged, or imposed after the execution of this lease, whether by the nation, state, county, city or any other public authority, including taxes for the last half of the year 1929-1930, upon the demised premises or any erections thereon, or upon the owner or occupier in respect thereof, or payable by either in respect thereof and to deliver to the lessor at all times promptly and sufficient

receipts and other evidence of the payment and discharge of the same.

(3) To promptly pay, in addition to the rents above specified, all gas, electric power, electric light, and water rates or charges which may become payable during the continuance of this lease for gas, electric power, electric lights, and water used on said premises.

(4) In case of the erection of any building or buildings or improvements on said demised premises, or any additions thereto, or repair, alteration or improvement of any building or buildings now on said demised premises or hereafter placed thereon, the lessee will pay for all labor performed and material furnished in or about such erection, repairs, alterations or improvements, and keep said demised premises and buildings and improvements thereon at all times free and clear of all liens for labor or materials furnished in and about such erection, repairs, alterations or improvements, and will defend at its own cost and expense, each and every lien asserted or claim filed against said premises or the buildings or improvements thereon, or any part thereof for labor claimed to have been so performed or material claimed to have been so furnished, and pay each and every judgment made or given against said premises, or any part thereof or the buildings or improvements thereon, or against the lessor on account of any such lien, and indemnify and save harmless the lessor from all and every claim and action on account of such claim, lien or judgment, arising out of or connected with such act or omission of the lessee, or any of its agents, employees or contractors, in or about such erection, repairs, alterations, improvements or employments.

(5) To indemnify the lessor against all costs and expenses, including counsel fees, lawfully and reasonably incurred in or about the premises, or in the defense of any action or proceeding, or in discharging the premises from any charge, lien, or incumbrance, or in obtaining possession after default of the lessee or the determination of this demise.

(6) That if an execution or other process be levied upon the interest of the lessee in this lease, or if a petition in bankruptcy be filed by or against the lessee in any court of competent jurisdiction, the lessor shall have the right, at her option, to re-enter said premises and annul this lease.

(7) Not to do or suffer anything to be done, by which persons or property in or about or adjacent to the demised premises may be injured or endangered; and the lessee agrees to indemnify and save harmless the lessor from any claim of any person of injuries to life, person, or property by reason of anything done, or permitted to be done or suffered, or omitted to be done, by the lessee in and about the occupation of said premises.

(8) To assume all risks of loss, injury, or damage of any kind or nature whatsoever to any building, structure, equipment or improvement belonging to said lessee, which may be now or hereafter placed upon said leased premises, and all risks of loss, injury, or damage of any kind or nature whatsoever to the contents of any such building or structure, or to any goods, merchandise, chattels or any other property now or that may hereafter be upon said leased premises, whether belonging to the lessee or others, and whether such loss, be caused by the negligence of the lessor, or any of her agents or otherwise, and to

save and keep harmless the lessor from all claims and suits growing out of any such loss, injury, or damage.

(9) That the lessee has examined the demised premises, and knows the condition of said premises and agrees to accept the same in the condition which they are now in.

(10) Not to make or suffer any waste on the premises.

(11) At the termination of this lease by lapse of time or otherwise to yield up the premises to the lessor in as good condition as the same are at the commencement of the said term, reasonable use and wear thereof excepted.

(12) Not to use said demised premises for any other purposes except to erect, maintain and operate thereon an oil refinery, absorption plant and cracking plant, together with all necessary machinery, tanks, vats, stills, boilers, pipes, and equipment used in the process of refining crude oil and extracting gasoline and other petroleum products from hydro-carbon substances.

(13) That in the event the lessee assigns this lease or sublets said demised premises the lessee shall not at any time during the term of said lease be released from any of the obligations thereunder, and the lessee shall at all times during said term be liable and responsible to the lessor for the faithful performance and observance of all its covenants and agreements therein contained.

3. The lessor hereby covenants with the lessee as follows

(1) That the lessee shall and will upon payment of the rents, taxes and assessments and all other sums of money herein provided to be paid by the lessee, and upon fully observing and performing the covenants and agree-

ments herein provided to be observed and performed by the lessee, quietly and peaceably possess and enjoy the above described premises during the full term of this lease without any interruption by the lessor or any person rightfully claiming under her, unless said lease be sooner terminated under and in accordance with any of the provisions herein contained, providing for such termination.

(2) That the lessor will, on the written request of the lessee made two calendar months, before the expiration of the term hereby created, and if there shall not be at the time of such request any breach or nonobservance of any of the covenants on the part of the lessee hereinbefore contained, grant to the lessee a lease of the demised premises for the further term of five (5) years from the expiration of the said term at the yearly rent of FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4500.00) payable quarter-yearly in advance and containing the like covenants and provisos as are herein contained, with the exception of the present covenant for renewal, the lessee on the execution of such renewed lease to execute a counter part thereof.

(3) That if the lessee within five years from the commencement of the term hereby created, shall give to the lessor two calendar months notice in writing that it desires to purchase the premises herein demised, and if there shall not at the time of such notice be any existing breach or nonobservance of any of the covenants on the part of the lessee hereinbefore contained, the lessor on the expiration of such notice will, upon payment of the sum of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), and of all arrears of

rent to the expiration of the notice and of interest on the said sum of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) at the rate of eight per cent per annum from the expiration of the notice until payment, by good and sufficient grant deed convey the demised premises to the lessee in fee simple, free and clear of all incumbrances, except this lease, conditions, restrictions and reservations of record, and taxes and assessments, if any, together with an easement for ingress and egress to said premises over a strip of land twelve feet wide extending in a westerly direction from Schumacher Road in the aforesaid County of Los Angeles, to the Eastern line of the demised premises, along the North line of the East Nine (9) acres of the North Fourteen (14) acres of the East Fifty-five (55) acres of the South Half ($S\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) of Section 8, Township 3 South, Range 11 West, San Bernardino Base and Meridian.

(4) That boilers, engines, machinery, tanks, vats, stills, pipes, equipment and fixtures, and all personal property erected on said leased premises by the lessee may be removed by the lessee at the termination of this lease, or any extension thereof, even though the same may be attached to said premises: Provided, the lessee shall not then be in default in the performance of the covenants hereof; and provided further, that the removal of any such property shall be effected before the expiration of said term, or any extension thereof, and all damages caused to said premises by such removal shall be repaired by the lessee on or before the expiration of said term.

(5) That the lessee shall have the right during the term of this lease to use for the purpose of ingress and

gress to said demised premises, a strip of land twelve feet in width extending in a westerly direction from Schumacher Road, in the aforesaid County of Los Angeles, along the north line of the East Nine (9) acres of the North Fourteen (14) acres of the East Fifty-five (55) acres of the South half ($S\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) of Section 8, Township 3 South, Range 11 West, San Bernardino Base and Meridian, to the Eastern line of said demised premises.

4. If the lessee shall, at any time hereafter during the continuance of this agreement, omit or fail to make the payments hereinabove agreed to be made, or any of them, and such default shall continue for the space of thirty days or shall fail punctually and faithfully to observe, keep and perform any other of the covenants and agreements thereof, and such default shall continue for the space of three months after notice from the lessor of such default requiring the lessee to remedy the same, then and in either of such cases the lessor may at any time either:

(a) Proceed by proper action or actions in the proper courts, either at law or in equity, to enforce performance of such covenants by the lessee or to recover damages for the breach thereof; or

(b) By notice in writing determine this lease, and thereupon enter into and upon the demised property, and shall thence forth hold, possess and enjoy the same free from any right of the lessee to use the demised premises for any purposes whatever, and thereupon any right, title and interest of the lessee to the use of the demised premises shall absolutely cease and determine as though

this lease had never been made; but the lessor shall, nevertheless, have the right to recover from the lessee any and all amounts which under the terms hereof may then be due and unpaid for the use of the demised premises.

5. It is expressly understood and agreed by and between the parties hereto that this lease may be assigned by the lessee, for the purposes herein recited and subject to all the terms, conditions and covenants herein contained, to any corporation now in existence or that may hereafter be formed for the purposes of succeeding the lessee or of assuming the operation, management and control of the business of the lessee; that said assignee and all successive assignees shall, in the various instruments of assignment, expressly assume all the lessee's covenants and obligations hereunder, and upon said assignment or subsequent assignments the original lessee, during all of said term or any renewal thereof, shall remain liable and responsible to the lessor for the faithful performance and observance of all the covenants and agreements in said lease contained.

6. No assent, express or implied, by lessor, to any breach of any of lessee's covenants or agreements, shall be deemed or taken to be a waiver of any succeeding breach of the same covenant or agreement.

7. In case any of the buildings, improvements or equipment now or hereafter placed on said demised premises are injured or destroyed or rendered untenable or useless by fire, the elements or any other cause, such destruction or injury shall not operate to terminate this

lease, but this lease shall continue in full force and effect.

8. In the event the lessee exercises the option to purchase said demised premises as hereinbefore provided, said sale of said property shall be subject to a reservation by the lessor, her executors, administrators, heirs or assigns, of a one-eighth ($1/8$) interest in and to all minerals, including oil and gas, in said land agreed to be sold as aforesaid.

9. It is mutually agreed by and between the parties, for themselves, and their heirs, legal representatives, successors, and assigns, that all the rights, duties, terms, conditions, agreements, and covenants herein set forth shall run with said leased premises, and shall inure and apply to and bind the heirs, legal representatives, successors, and assigns of said parties respectively.

IN WITNESS WHEREOF, the parties hereto and to another instrument of like tenor have hereunto set their hands and seals the day and year first above written.

MATILDA E. RICHER
LESSOR

EL CAMINO OIL COMPANY,
a corporation,

By BERTRAM E. DEVERE
VICE-PRESIDENT

By ALFRED BARSTOW
SECRETARY

EXHIBIT "B"

LEASE OF REAL PROPERTY

This indenture made the 15th day of March, 1932, between MATHILDA E. RICHER, of the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the lessor, which expression where the context so admits, shall include her executors, administrators, heirs and assigns, party of the first part, and H. A. MEEK, not for himself personally, but only as Receiver for the El Camino Oil Company, Ltd., and for his successors and assigns, as such Receiver, lessee, and party of the second part, witnesseth:

1. In consideration of the rent and the lessee's covenants hereinafter reserved and contained the lessor hereby demises and leases unto the lessee that certain piece or parcel of land situated, lying and being in the County of Los Angeles, State of California, particularly described as follows, to-wit:

The West Five (5) acres of the North Fourteen (14) acres of the East Fifty-five (55) acres of the South Half ($S\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) of Section 8, Township 3 South, Range 11 West, San Bernardino Base and Meridian.

To have and to hold the said land and premises for and during the term of seven (7) years and six (6) months from the 15th day of March, 1932.

Yielding and paying therefor the rental as follows:

For the first ten (10) months of this lease, from March 15, 1932, until January 15, 1933, the sum of ONE HUNDRED DOLLARS (\$100.00) per month, payable in

monthly installments, each in advance on the 15th day of the month. For the balance of the term of six (6) years and eight (8) months from January 15, 1933, until September 15, 1939, the sum of ONE HUNDRED FIFTY DOLLARS (\$150.00) per month, payable in monthly installments, each in advance on the 15th day of the month, to the lessor at her residence, 1231 West Forty-sixth Street, Los Angeles, California, or to her agent as she may direct.

2 The lessee, to the intent that the obligations may continue throughout the term hereby created, covenants with the lessor as follows:

(1) To pay the rent reserved on the days and in the manner aforesaid.

(2) To bear, pay and discharge all taxes, assessments, duties, impositions, and burdens whatsoever assessed, charged, or imposed after the execution of this lease, whether by the nation, state, county, city or any other public authority, upon the demised premises or any erections thereon, or upon the owner or occupier in respect thereof, or payable by either in respect thereof and to deliver to the lessor at all times promptly proper and sufficient receipts and other evidence of the payment and discharge of the same.

(3) To pay promptly, in addition to the rents above specified, all gas, electric power, electric light, and water rates, or charges which may become payable during the continuance of this lease for gas, electric power, electric light, and water used on said premises.

(4) In case of the erection of any building or buildings or improvements on said demised premises, or any

additions thereto, or repair, alteration or improvement of any building or buildings now on said demised premises or hereafter placed thereon, the lessee will pay for all labor performed and material furnished in or about such erection, repairs, alterations or improvements, and keep said demised premises and buildings and improvements thereon at all times free and clear of all liens for labor or materials furnished in and about such erection, repairs, alterations or improvements, and will defend at its own cost each and every lien asserted or claim filed against said premises or the building or improvements thereon, or any part thereof for labor claimed to have been so performed or material claimed to have been so furnished and pay each and every judgment made or given against said premises, or any part thereof or the buildings or improvements, thereon, or against the lessor on account of any such lien, and indemnify and save harmless the lessor from all and every claim and action on account of such claim, lien or judgment, arising out of or connected with such act or omission of the lessee, or any of its agents, employees or contractors, in or about such erection, repairs, alterations, improvements or employments.

(5) To indemnify the lessor against all costs and expenses, including counsel fees, lawfully and reasonably incurred in or about the premises, or in the defense of any action or proceeding, or in discharging the premises from any charge, lien, or incumbrance, or in obtaining possession after default of the lessee or the determination of this demise.

(6) That if an execution or other process be levied upon the interest of the lessee in this lease, or if a petition in bankruptcy be filed by or against the lessee in any

court of competent jurisdiction, the lessor shall have the right, at her option, to re-enter said premises and annul this lease.

(7) Not to do or suffer anything to be done, by which persons or property in or about or adjacent to the demised premises may be injured or endangered; and the lessee agrees to indemnify and save harmless the lessor from any claim of any person of injuries to life, person, or property by reason of anything done, or permitted to be done or suffered, or omitted to be done, by the lessee in and about the occupation of said premises.

(8) To assume all risks of loss, injury, or damage of any kind or nature whatsoever to any building, structure, equipment or improvement belonging to said lessee, which may be now or hereafter placed upon said leased premises, and all risks of loss, injury, or damage of any kind or nature whatsoever to the contents of any such building or structure, or to any goods, merchandise, chattels or any other property now or that may hereafter be upon said leased premises, whether belonging to the lessee or others, and whether such loss, be caused by the negligence of the lessor, or any of her agents or otherwise, and to save and keep harmless the lessor from all claims and suits growing out of any such loss, injury, or damage.

(9) The lessee has examined the demised premises, and knows the condition of said premises and agrees to accept the same in the condition which they are now in.

(10) Not to make or suffer any waste on the premises.

(11) At the termination of this lease by lapse of time or otherwise to yield up the premises to the lessor in as good condition as the same are at the commencement of the said term, reasonable use and wear thereof excepted.

(12) Not to use said demised premises for any other purposes except to erect, maintain and operate thereon an oil refinery, absorption plant and cracking plant, together with all necessary machinery, tanks, vats, stills, boilers, pipes, and equipment used in the process of refining crude oil and extracting gasoline and other petroleum products from hydro-carbon substances.

(13) That in the event the lessee assigns this lease or sublets said demised premises the lessee shall not at any time during the term of said lease be released from any of the obligations thereunder, and the lessee shall at all times during said term be liable and responsible to the lessor for the faithful performance and observance of all its covenants and agreements therein contained.

3. The lessor hereby covenants with the lessee as follows:

(1) That the lessee shall and will upon payment of the rents, taxes and assessments and all other sums of money here in provided to be paid by the lessee, and upon fully observing and performing the covenants and agreements herein provided to be observed and performed by the lessee, quietly and peaceably possess and enjoy the above described premises during the full term of this lease without any interruption by the lessor or any person rightfully claiming under her, unless said lease be sooner terminated under and in accordance with any of the provisions herein contained, providing for such termination.

(2) That the lessor will, on the written request of the lessee made two calendar months before the expiration of the term hereby created, and if there shall not

be at the time of such request any breach or nonobservance of any of the covenants on the part of the lessee hereinbefore contained, grant to the lessee a lease of the demised premises for the further term of five (5) years from the expiration of the said term at the monthly rental of ONE HUNDRED FIFTY DOLLARS (\$150.00) payable monthly in advance and contained in the like covenants and provisos as are herein contained, with the exception of the present covenant for renewal, the lessee on the execution of such renewed lease to execute a counter part thereof.

(3) That if the lessee at any time prior to September 15, 1934, shall give to the lessor two calendar months notice in writing that he desires to purchase the premises herein demised, and if there shall not at the time of such notice by any existing breach or nonobservance of any of the covenants on the part of the lessee hereinbefore contained, the lessee on the expiration of such notice shall have the right to purchase the herein described property for a purchase price to be determined as follows: The price to be paid for said property shall be its actual value at the time of exercising this option as determined by a board of three (3) appraisers, one to be appointed by the lessor, one appointed by the lessee, and a third to be appointed by the appraisers themselves. The final appraisal of this board shall be accepted by both parties to this lease as the actual purchase price to be paid for the herein described property, and upon the expiration of the aforementioned notice and the payment of the sum determined by the appraisers to be the purchase price, the first party will by good and sufficient grant deed con-

vey the demised premises to the lessee in fee simple, free and clear of all incumbrances, except this lease, conditions, restrictions and reservations of record, and taxes and assessments, if any, together with an easement for ingress and egress to said premises over a strip of land twelve feet wide extending in a westerly direction from Schumacher Road in the aforesaid County of Los Angeles, to the Eastern line of the demised premises, along a North line of the East Nine (9) acres of the North Fourteen (14) of the East Fifty-five (55) acres of the Southern Half ($S\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 8, Township 3 South, Range 11 West, San Bernardino Base and Meridian.

(4) That boilers, engines, machinery, tanks, vats, stills, pipes, equipment and fixtures, and all personal property erected on said leased premises by the lessee may be removed by the lessee at the termination of this lease, or any extension thereof, even though the same may be attached to said premises: Provided, the lessee shall not then be in default in the performance of the covenants hereof; and provided further, that the removal of any such property shall be effected before the expiration of said term, or any extension thereof, and all damages caused to said premises by such removal shall be repaired by the lessee on or before the expiration of said term.

(5) That the lessee shall have the right during the term of this lease to use for the purpose of ingress and egress to said demised premises, a strip of land twelve

feet in width extending in a westerly direction from Schumacher Road, in the aforesaid County of Los Angeles, along the north line of the East Nine (9) acres of the North Fourteen (14) acres of the East Fifty-five (55) acres of the South half ($S\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) of Section 8, Township 3 South, Range 11 West, San Bernardino Base and Meridian, to the Eastern line of said demised premises.

(4) If the lessee shall, at any time hereafter during the continuance of this agreement, omit or fail to make the payments hereinabove agreed to be made, or any of them, and such default shall continue for the space of thirty days or shall fail punctually and faithfully to observe, keep and perform any other of the covenants and agreements thereof, and such default shall continue for the space of three months after notice from the lessor of such default requiring the lessee to remedy the same, then and in either of such cases the lessor may at any time either :

(a) Proceed by proper action or actions in the proper courts, either at law or in equity, to enforce performance of such covenants by the lessee or to recover damages for the breach thereof; or

(b) By notice in writing determine this lease, and thereupon enter into and upon the demised property, and shall thenceforth hold, possess and enjoy the same free from any right of the lessee to use the demised premises for any purposes whatever, and thereupon any right, title and interest of the lessee to the use of the demised prem-

ises shall absolutely cease and determine as though this lease had never been made; but the lessor shall, nevertheless, have the right to recover from the lessee any and all amounts which under the terms hereof may then be due and unpaid for the use of the demised premises.

5. It is expressly understood and agreed by and between the parties hereto that this lease may be assigned by the lessee, for the purposes herein recited and subject to all the terms, conditions and covenants herein contained, to any corporation now in existence or that may hereafter be formed for the purposes of succeeding to the lessee or of assuming the operation, management and control of the business of the lessee; that said assignee and all successive assignees shall, in the various instruments of assignment, expressly assume all the lessee's covenants and obligations hereunder, and upon said assignment or subsequent assignments the original lessee, during all of said term or any renewal thereof, shall remain liable and responsible to the lessor for the faithful performance and observance of all the covenants and agreements in said lease contained.

(6) No assent, express or implied, by lessor, to any breach of any of lessee's covenants or agreements, shall be deemed or taken to be a waiver of any succeeding breach of the same covenant or agreement.

(7) In case any of the buildings, improvements or equipment now or hereafter placed on said demised premises are injured or destroyed or rendered untenable or

useless by fire, the elements or any other cause, such destruction or injury shall not operate to terminate this lease, but this lease shall continue in full force and effect.

(8) In the event the lessee exercises the option to purchase said demised premises as hereinbefore provided, said sale of said property shall be subject to a reservation by the lessor, her executors, administrators, heirs or assigns, of a one-eighth ($1/8$) interest in and to all minerals, including oil and gas, in said land agreed to be sold as aforesaid.

(9) It is mutually agreed by and between the parties, for themselves, and their heirs, legal representatives, successors, and assigns, that all the rights, duties, terms, conditions, agreements, and covenants herein set forth shall run with said leased premises, and shall inure and apply to and bind the heirs, legal representatives, successors, and assigns of said parties respectively.

Matilda E. Richer

LESSOR

EL CAMINO OIL COMPANY,
LTD.

H. A. MEEK, RECEIVER

H. A. Meek

H. A. MEEK

Approved as to form 3/15/32

Lewis E. Whitehead

Attorney for the Receiver

SALES CONTRACTS AND BALANCES DUE AS OF JUNE 7, 1930

<u>KIND OF PROPERTY</u>	<u>FROM WHOM PURCHASED</u>	<u>DATE OF CONTRACT</u>	<u>TOTAL PRICE</u>	<u>BALANCE June 7, 1930</u>
1-1000 Bbl. Steel Tank and 2- 500 Bbl. Steel Tanks	American Pipe & Steel Co.	March 20, 1930	\$ 1691.50	\$ 563.83
1-Star Compressing Unit	Sprayway Corporation	November 25, 1929	575.55	175.76
1-200 Horsepower Boiler & Fittings	Consolidated Steel Corp.	November 14, 1929	4700.00	600.00
1-Sundstrand	General Office Equipment Company	May 14, 1930	535.60	329.60
3-Monroe Calculating Machines	Monroe Calculating Machine Com- pany	March 7, 1930	1098.83	498.47
1-8x12x9 Horizontal Compressor	Worthington Machinery Corp.	April 11, 1930	1685.00	1685.00
Water Well Pump	Pomona Pump Co.	October 3, 1929	758.80	300.00
			<u>\$11045.38</u>	<u>\$ 4152.66</u>

LEASE CONTRACTS AND BALANCES DUE AS OF JUNE 7, 1930

<u>KIND OF PROPERTY</u>	<u>FROM WHOM PURCHASED</u>	<u>DATE OF CONTRACT</u>	<u>TOTAL PRICE</u>	<u>BALANCE June 7, 1930</u>
2- 5000 Bbl. Tanks	Western Pipe & Steel Company	October 31, 1929	\$11356.00	}
5- 1000 Bbl. Tanks		November 30, 1929	32644.50	
3- 250 Bbl. Tanks	Western Pipe & Steel Company			}----- \$37500.00
2- 100 Bbl. Tanks Flanges				
2- 35000 Bbl. Tanks & Miscellane- ous Swing Pipes, Winches and Cables on 2- 5000 Bbl. Tanks	Western Pipe & Steel Company	November 30, 1929	3392.50	}
1- 35000 Bbl. Steel Tank	Western Pipe & Steel Company	February 13, 1930	13250.00	
			<u>\$60643.00</u>	<u>\$37500.00</u>

RECAPITULATION

Balance Due June 7, 1930	Sales Contracts	\$ 4152.66
Balance Due June 7, 1930	Lease Contracts	<u>37500.00</u>
	TOTAL	<u>\$41652.66</u>

EXHIBIT "D"

SALES CONTRACTS AND BALANCES DUE AS OF MARCH 31, 1931

<u>KIND OF PROPERTY</u>	<u>FROM WHOM PURCHASED</u>	<u>DATE OF CONTRACT</u>	<u>TOTAL PRICE</u>	<u>BALANCE March 31, 1931</u>
NONE FROM PRIOR SCHEDULE				

LEASE CONTRACTS AND BALANCES DUE AS OF MARCH 31, 1931

<u>KIND OF PROPERTY</u>	<u>FROM WHOM PURCHASED</u>	<u>DATE OF CONTRACT</u>	<u>TOTAL PRICE</u>	<u>BALANCE March 31, 1931</u>
See Schedule June 7, 1930	Western Pipe & Steel Company	See Schedule June 7, 1930	\$60,643.00	<u>\$33,921.75</u>
	* * * * *	* * * * *		

THIRD SCHEDULE

Payments on Lease Contracts March 31, 1931 to Receivership	\$ 6,448.45
Leaving a Balance which has been paid by the Receiver, of	<u>\$27,473.30</u>

EXHIBIT "E"

LEASE CONTRACT

THIS LEASE, Made this 16th day of December, 1931, between the WESTERN PIPE & STEEL COMPANY OF CALIFORNIA, a corporation, party of the first part, and EL CAMINO OIL COMPANY, LTD., party of the second part;

WITNESSETH: The party of the second part leases and hires of the party of the first part, and the party of the first part hereby lets and leases to the party of the second part, the following described personal property:

2 - 3 ring,	5,000 bbl.	Western	A. P. I.	Bolted	Tanks
5 - 2 ring,	1,000 bbl.	"	" " "	"	"
3 - 2 ring,	500 bbl.	"	" " "	"	"
3 - 1 ring,	250 bbl.	"	" " "	"	"
2 - 1 ring,	100 bbl.	"	" " "	"	"

Two (2) 5,000 bbl. A. P. I. Bolted Tanks with water coal roofs, Hydroil Gaskets, Flanges and 6" swing pipes.

One (1) 1,000 bbl. A. P. I. Bolted Tank with water seal roof and Special Hydroil Gasket and Flanges.

One (1) 35,000 bbl. A. P. I. Riveted Steel Tank with welded bottom and welded water seal roof, including spiral stairway, flanges, and 8" swing pipe, being No. 35001.

One (1) 35,000 bbl. A. P. I. Riveted Steel Storage Tank, with welded bottom and welded water seal roof, including one spiral stairway, flanges, and 8" swing pipe, being tank No. 35002.

One (1) 35,000 bbl. A. P. I. Riveted Steel Storage Tank, with welded bottom and welded water seal roof,

including one spiral stairway, flanges, and 8" swing pipe, being No. 35003.

for a term of twenty-nine (29) months, and said party of the second part agrees it will not dispose of said property or take or allow said property to be taken out of the County of Los Angeles, State of California, and to pay to said first party for rental, hire and use of said property the sum of Twenty-eight Thousand Nine Hundred Seventy-three and 30/100 (\$28,973.00) Dollars, together with interest from date on unpaid principal, at the rate of 7% per annum, payable monthly. Principal and interest payable in installments of One Thousand (\$1,000) Dollars, or more, principal, together with interest from date of note on each payment of principal on the 20th day of each month, beginning on the 20th day of January, 1932, and continuing until said principal and interest have been paid in full.

The above sums are to be evidenced by a promissory note, dated the 16th day of December, 1931, bearing interest at the rate of 7% per annum, principal payable in monthly installments of One Thousand (\$1,000) Dollars, together with interest as aforesaid. Said note to provide for a reasonable attorney's fees in case an attorney is hired for its collection.

IT IS EXPRESSLY AGREED, that the said first party retains the title to all said property, and the second party acquires no interest in or title to said property; the second party shall take immediate possession of all of said property, and so long as it complies with the provisions hereof, it may retain such possession. Said second party shall keep said property in good repair and pay all taxes and assessments levied or assessed thereon.

The party of the second part shall keep said property insured in favor of the party of the first part, but said insurance will be at the expense of the second party, settlement of the same to be made to the party of the first part; in case of loss the insurance money shall be retained by the party of the first part to the extent of the balance of the rent then unpaid under this lease, and the surplus, if any, paid to the party of the second part.

All of said property shall be at the risk of the party of the second part so long as the same is not in the possession of the first party, and no loss thereof or damage thereto, while not in the possession of the first party, shall relieve the second party from the payment of any part of said rent, or the payment of any amounts which may have been paid by the first party, under the terms of this lease, together with interest thereon as aforesaid. Should the second party fail to pay taxes or assessments on said property when due, or fail to keep said property in good repair, or fail to pay any amount or amounts due any person or persons by reason of said person having a lien upon said property, for repairs, or labor, or materials furnished for said property, then the first party may at its option pay the same, or have said property repaired and the amounts of said payments shall be added to the next payment of rent becoming due, and shall be repaid to the first party by the second party with such payment.

The second party agrees to pay to the first party the amount of any judgment which may be rendered against and paid by said party of the first part, together with costs and counsel fees incurred therein, by reason of any damage to person or property caused by said above-described property during the continuance of this lease.

If any attachments, or other legal process, shall at any time be levied upon said goods and chattels, or any part thereof, or if they shall be taken under any writ of attachment, or other legal process for or upon any debt or demand now due or to become due, or claimed to be due from said second party to any person or persons, that then this lease shall terminate and become void, and the right of possession in and to said goods and chattels, and every part thereof, shall revert to, and vest in said first party and said first party shall have the right, without notice or service, to take said goods and chattels, and every part thereof from second party without legal process.

If the party of the second part fails to make any payments as herein provided, or fails to comply with the terms and conditions thereof in any respect, the first party may take possession of all of said property without legal proceedings, and all payments previously made by second party to the first party shall be considered and apply as compensation for depreciation in value, and apply toward the use and rental of said property, and as liquidated damages, and said second party waives all right to the money so paid, and second party further agrees that it is liable to first party for any unpaid balance due for rent and interest thereon as provided herein.

IT IS FURTHER DISTINCTLY UNDERSTOOD AND AGREED, by and between the parties hereto, that at the expiration of said term, the second party shall return and deliver to the first party the above-described property in good order and condition.

IT IS FURTHER DISTINCTLY UNDERSTOOD AND AGREED, by and between the parties hereto, that in the event said second party complies with all the terms

and conditions of this agreement, said second party shall then, (but not otherwise) have the right to purchase said property for the further sum of \$1.00 on the date of payment of last installment of rent, and said first party shall be required to transfer and sell said property to said second party for the further sum of \$1.00 in cash, to be paid said first party by said second party on the said date.

IT IS FURTHER UNDERSTOOD AND AGREED that said second party will not assign this lease, nor assign or sublet its interest in or to any of the goods and chattels herein demised to any person or persons without the written consent of said first party is first obtained.

IT IS FURTHER AGREED, however, that time shall be of the essence of this lease in every particular, and that unless all the conditions of the said foregoing lease shall have been fulfilled and performed by the second party, and the said rental paid as aforesaid, then the privilege to purchase said property hereby granted, shall be waived and forfeited.

In case suit is brought to recover said property, or any part thereof, or any part of the amount due under this agreement, said second party agrees to pay a reasonable sum as and for attorney's fees for said first party.

The party of the second part will execute and deliver to said party of the first part, a good and valid lease, by the terms of which said second party will lease to said first party a certain parcel of land suitable in size and location and graded in an approved manner for the erection of storage tanks, said parcel to be selected by said second party within the boundary of those certain premises sit-

uated in the County of Los Angeles, State of California, and described as follows:

The West five (5) acres of the North fourteen (14) acres of the East fifty-five (55) acres of the South half of the Northwest quarter of Section 8, Township 3 South, Range 11 West, San Bernardino Base & Meridian.

IT IS MUTUALLY AGREED AND UNDERSTOOD that said party of the second part is granted the exclusive right and privilege to enter said leased premises upon which said tanks are erected at any time and for any purpose whatsoever, and is granted rights of way for the laying of pipe lines, and/or erecting of poles and the stringing of wires or for any other purpose necessary for the proper conduct of its operation.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 16th day of December, 1931.

WESTER PIPE & STEEL COMPANY OF CALIFORNIA

BY J. E. TERREL

Ass't. Secretary.

Party of the First Part.

EL CAMINO OIL COMPANY, LTD.
BY BERTRAM E. DEVERE

President.

Party of the Second Part.

By VICTOR C. HENRY

Secretary.

[Endorsed]: Filed Oct. 24, 1935 R. S. Zimmerman
Clerk By Robert P. Simpson Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

J. N. HENDRICKSON,)	
)	
Plaintiff,)	
	)	No. W-21-C.
-vs-)	
	)	MEMORANDUM
EL CAMINO OIL COMPANY,	)	OF DECISION
LTD., a corporation,)	
)	
Respondent.)	
_____)	

COSGRAVE, District Judge.

The State of California presents its claim against the receiver in equity of the El Camino Oil Company for taxes due it from that company under the Act of 1923, licensing the business of producing and distributing gasoline and other products, together with penalties. The taxes for which claim is made were those due for the quarters ending respectively March 31, June 30, September 30, 1930, and March 31, 1931; the taxes for the two intervening quarters having been paid. Under the law as it existed at that time (Statutes of 1925, p. 659) the tax, if unpaid, became delinquent thirty-five days after the end of the quarter and if not paid on the forty-fifth day a ten percent penalty was added for delinquency. The company was indebted to F. R. Kenney and L. W. Wickes for crude oil furnished in an amount then not ascertained, but which was later determined to be \$78,046.60, and on June

6th executed one promissory note to them for \$10,000, secured by chattel mortgage upon certain of its equipment, and on June 7th another promissory note for \$80,000, secured by a trust deed upon certain real property. Both instruments were recorded in the office of the County Recorder on June 10th following.

In a suit commenced by a creditor, a receiver of the company's property was appointed to conserve its assets for the benefit of all creditors through orderly liquidation. The usual notice was given requiring the presentation of claims. The two note holders presented a claim setting up their notes and security and claiming a first lien upon all of the property described in the chattel mortgage and deed of trust. The State of California presented its claim and claims a lien upon all of the property of the oil company prior and paramount to that of the holders of the mortgage and trust deed. The individual claimants concede the priority of the tax lien for the first quarter, that is for the three months ending March 31, 1930, which became delinquent May 15, 1930, but deny such character to the ten percent added by reason of the penalty. The receiver takes a similar position. The individual claimants deny the priority of the tax lien for the second quarter which became delinquent on August 15, 1930, and for all subsequent quarters, over their contract liens and the receiver supports them in this position.

On May 29, 1931, the attorney general of the State of California, on the request of the state controller, began an action in the Superior Court in Los Angeles County to recover the amount of the unpaid taxes with the penalties in accordance with the provisions of the act, (Stats.

1923, p. 574, section 9). The complaint sets forth the extension of the assessment upon the tax roll of the State Board of Equalization, the delivery of the tax roll to the state controller, a notice by the latter to the delinquent company, and non payment of the taxes and penalties. The lien now claimed by the state is not set up and no relief, other than a money judgment is asked. On June 30, 1931, a stipulation was entered into by which the state might have judgment entered as prayed for at its pleasure. Between May 27, 1930, and January 11, 1932, a total of \$85,846.29 was paid by the oil company in varying installments and credited generally without application either by the company or the state officials to any particular item of the tax or penalties.

Two main questions are presented. Is the lien of the state for gasoline sold during the quarters subsequent to March 31, 1930, paramount to the lien created by the mortgage and deed of trust, filed for record on June 10th? Did the State of California by commencing its action on May 29th, 1931, wherein no relief is prayed for with respect to the lien that it now claims, waive such lien?

The act in question (Stats. of California, 1923, p. 571) has been passed upon by the United States Circuit Court of Appeals for the Ninth Circuit. In an opinion written by the late Judge Sawtelle, (*Pauley v. State of California*, 75 Fed. (2d) 120), the act, although not as of the time here involved, is held valid and the tax thereby created is held an excise tax and not a property tax and the lien created thereby is paramount to the rights of unsecured creditors. The decision does not discuss the tax lien with respect to its priority over that of a secured creditor.

“We are assuming herein that the question of the priority of the state’s tax liens over antecedent liens is not involved.”

– Pauley v. State of California.

75 Fed. (2d) 120. (132).

In discussing the question as to whether the act created a lien upon the property of the distributor the decision discusses sections 3717, 3718 and 3787 of the Political Code of California, quoting from *California Loan etc. Company v. Weis*, 118 Cal. 489:

“The mandate of our statutes puts all tax liens upon the same plane, makes them all paramount to other liens, and under sale for their enforcement, gives to the purchaser a title free and unincumbered.” (133).

Argument might be made that the decision in *Pauley v. State of California*, *supra*, gives to the liens created by the act in question the same priority of the ordinary lien of taxes created by provisions of the Political Code. This, however, is not the case. As specifically noted the lien is discussed in its relation to the claims of unsecured creditors.

The lien created by the provisions of the Political Code for state and county taxes, held by the Supreme Court of California in *California Loan etc. Company v. Weis*, *supra*, to be paramount to those created by private contract previous or subsequent to the date of the tax lien, is based upon the provisions of Political Code 3716 and also 3788, as they existed in 1897. The act in question here contains substantially the language of section 3716.

“Said tax shall be a lien upon all the property of the distributor. It . . . shall have the effect of an execution

duly levied . . . and shall remain until the tax is paid or the property sold for the payment thereof.”

– Stats. of 1925, p. 659.

The California Supreme Court goes on to say (*California Loan etc. Company v. Weis*, supra, 495):

“It is held in *Eaton’s Appeal*, 83 Pa. St. 152, that a statute which declares that a tax shall continue a lien ‘until fully paid and discharged’, ex proprio vigore makes the lien superior to that of a judgment obtained before the tax is levied. In this state we not only have language of similar import in section 2716 (3716) of the Political Code, but that language is aided so as to remove the need of interpretation by section 3788, which provides that the deed conveys the absolute title free from all encumbrances.”

California Loan & Trust Co. v. Weis, p. 495.

While it might be urged that the court in the language quoted expresses the view that the language of 3716 is determinative, it is to be noticed that in the opinion of the court that language is aided by the provisions of section 3788.

The *Weis* case is commented upon and to a certain extent explained by the Supreme Court of the State of California in *Guinn v. McReynolds*, 177 Cal. 230. In that case the question at issue was the relative priority of the lien created by section 2322-a, Political Code of California, for pest eradication, and private liens. The court held that the lien created under the act did not have such priority because not given by express terms of, or reasonable inference from the statutes.

“But the authorities declare, virtually without dissent, that even a tax lien is not entitled to rank ahead of a pre-existing mortgage, or other contract lien, unless the legislative enactment creating the tax lien has given it priority. (37 Cyc. 1143). The priority need not be declared in express terms. It is enough if the intent to postpone contract liens appear by reasonable inference from the provisions of the act.”

“In *California Loan and Trust Co. v. Weis*, 118 Cal. 489, (50 Pac. 697), it was held that the lien for personal property taxes, imposed by our law upon the real property of the person assessed, was superior to pre-existing encumbrances upon the land. The question, said the court, ‘depends for its determination entirely upon statutory enactment,’ and the expression of a legislative intent that the tax lien should have priority was found in sections 3716 and 3788 of the Political Code, the former declaring that the lien is not removed until the taxes are paid, or the property sold, and the latter that the tax deed conveys to the grantee the absolute title to the land, free of all encumbrances, excepting liens for subsequent taxes.”

— *Guinn v. McReynolds*, *supra* 232, 233.

These decisions are important, of course, because the language of the act in question to the effect that the lien remains until the tax is paid or the property sold for its payment, is not supplemented by language similar to that found in Political Code 3788. The latter seems decisively to determine the nature of the lien as determined by the California Supreme Court. Without the language of section 3788 it is not a necessary inference that the result of the sale for the tax is to wipe out pre-existing contract

liens. Since the interpretation given to comparable statutes by the highest court of the state makes it at least doubtful that the lien claimed by the state is paramount to pre-existing liens created by private contract, it must be held that the tax lien for the quarters subsequent to March 31, 1930, is not paramount to that created by the mortgage and trust deed.

“However, the legislative intention to make taxes a paramount lien displacing prior liens must be plainly expressed, since such a construction will not be favored.”

— Cooley, *The Law of Taxation*. para. 1240.

By the language of the act, Stats. 1925, p. 659, sec. 4, the lien attaches at the time of the delivery or distribution. The lien of the state must therefore be computed to and including May 10th, 1930, as on that date the mortgage and trust deed were recorded. On the amount found due, however, there must be credited the sum of \$85,846.29 actually paid as above narrated.

The individual claimants argue that the state waived its lien by the commencement of the action to recover a money judgment. As the act originally stood, (Stats. 1923, 571) it was the duty of the attorney general at the request of the state controller to prosecute an action to collect the delinquent tax with penalties. The tax was not made a lien upon the property of the distributor. As amended in 1925 it was made such lien although no machinery was provided for the assertion of the lien. The original provision for suit to recover the taxes was how-

ever retained. It is now claimed by the individual claimants that in commencing the suit to recover a money judgment the state waived its right to the lien.

It is a principle in matters of election that before a party who has two courses of action open, by adopting one course is prevented later from pursuing the other, the two remedies must be inconsistent with each other. 20 C. J. p. 20. If the remedies are concurrent and consistent with each other, then he is not estopped. *Idem* 7. I see nothing inconsistent in the two courses here pursued by the state. It is to be noticed that no judgment was actually entered. The state was at liberty to seek to amend its complaint at any time. The judgment, even if any were entered, would only have the effect of ascertaining the amount due and the liability of the company for its payment. It was not necessarily inconsistent with the sale of the property thereafter to satisfy the lien, at least not at the present stage of the action. 61 *Corpus Juris*, on the subject of waiver and abandonment in taxation matters, p. 947, states:

“The recovery of a personal judgment for taxes on land against the owner will not extinguish the tax lien.” It must therefore be held that by seeking to obtain a money judgment for the amount of the tax the state did not waive its lien.

No distinction it seems to me, can be drawn between the tax due and the penalty. By the language of the Act (Section 4, Stats. of 1925, p. 659) “the amount of such

license tax shall become delinquent and ten per cent penalty shall be added thereto for delinquency.” Claimants base their objection to the penalty on the provisions of the Bankruptcy Act, section 57-j, 11USC 93, providing that claims for penalties shall not be allowed for debts owing as a penalty except for the amount of pecuniary loss suffered by the act out of which the penalty arises. (Bankruptcy Act, Section 57, subdivision j). This procedure is controlling so far as bankruptcy is concerned only because expressly made so by the provisions of the act. Such provisions are not necessarily controlling in equity proceedings generally. The language of the act to the effect that the penalty is added means that it has become a part of the tax and cannot be distinguished therefrom. Such is the character that has been uniformly given to penalties under the tax acts by all the courts of California.

The foregoing expresses my views upon all of the substantial questions presented and counsel for the individual claimants will propose and present an order in accordance therewith wherein exception is reserved to all injured parties.

May 8, 1936.

[Endorsed]: Filed May 8, 1936 R. S. Zimmerman
Clerk By Francis E. Cross, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER DETERMINING PRIORITY OF LIENS OF
THE STATE OF CALIFORNIA, AND F. R.
KENNEY AND L. W. WICKES

The petition of the State of California for an order to show cause why claim for taxes should not be allowed as a preferred claim, having been duly presented to the Court, and the Court having issued its order to show cause why the claim of the State of California for taxes should not be preferred and allowed, and the matter having been submitted upon agreed stipulations of facts, and briefs filed, and the Court being fully advised in the premises, and having heretofore filed on the 8th day of May 1936 its memorandum of decision herein, now therefore,

It is hereby Ordered, Adjudged and Decreed:

1. That the claim of the State of California for license taxes in the sum of \$252,420.29 for gasoline sold and delivered by the El Camino Oil Company, Ltd., and penalties thereon in the sum of \$33,604.91, be and is hereby declared to be a valid and existing claim against the receivership estate.

2. That the claim of the State of California for license taxes in the sum of \$252,420.29 for gasoline sold and delivered by the El Camino Oil Company, Ltd., and penalties thereon in the sum of \$33,604.91, be and is hereby declared to be a lien upon all of the property of the El Camino Oil Company, Ltd., and such lien shall remain on said property until the license tax for which the same is imposed is paid or the property sold for the payment thereof; that said lien attached upon said property at the

time of the sale and distribution of gasoline by the El Camino Oil Company, Ltd. for which the said license tax is imposed.

3. That the claim of F. R. Kenney and L. W. Wickes in the sum of \$78,046.60, together with interest thereon at the rate of seven (7%) per cent per annum, compounded quarterly, from the 31st day of May, 1932, be, and is hereby declared to be a valid and existing claim against the receivership estate.

4. That the claim of F. R. Kenney and L. W. Wickes in the sum of \$78,046.60, together with interest thereon at the rate of seven (7%) per cent per annum, compounded quarterly, from the 31st day of May, 1932, is secured by a chattel mortgage dated the 6th day of June, 1930, executed by El Camino Oil Company, Ltd. and recorded in the office of the County Recorder of Los Angeles County the 10th day of June, 1930, and by a deed of trust dated the 7th day of June, 1930, executed by the El Camino Oil Company, Ltd. as Trustor to the Title Insurance and Trust Company, a corporation, as Trustee, in favor of F. R. Kenney and L. W. Wickes as beneficiaries, and recorded in the office of the County Recorder of Los Angeles County on the 10th day of June, 1930; and said chattel mortgage and said deed of trust be, and are hereby declared to be a valid and existing lien upon the property described in said chattel mortgage and said deed of trust.

5. That the sum of \$80,733.47 heretofore paid by El Camino Oil Company, Ltd. on account of license taxes due the State of California for gasoline sold and delivered shall be credited on account of license taxes due for

gasoline sold and delivered prior to and including the 31st day of March, 1930.

6. That the lien of the State of California for the unpaid balance of the claim of the State of California for license taxes due on account of gasoline sold and delivered by El Camino Oil Company, Ltd. prior to and including the 31st day of March, 1930, together with unpaid penalties thereon, i. e., a present claim on account of such taxes in the sum of \$21,487.43 after crediting the sum of \$80,733.47 as provided in paragraph 5 above, and on account of such penalties in the sum of \$10,222.09, be, and is hereby declared to be a prior and paramount lien on the property described in said chattel mortgage and said deed of trust ahead of the lien of the claimants F. R. Kenney and L. W. Wickes.

7. That the lien of the State of California for the unpaid balance of the claim of the State of California for license taxes due on account of gasoline sold and delivered by El Camino Oil Company, Ltd. subsequent to the 31st day of March, 1930, and prior to and including the 10th day of June, 1930, i. e., a present claim on account of such taxes in the sum of \$75,165.86, be, and is hereby declared to be a prior and paramount lien on the property described in said chattel mortgage and said deed of trust ahead of the lien of F. R. Kenney and L. W. Wickes.

8. That the claim of the State of California for priority of its lien on account of gasoline sold and delivered by the El Camino Oil Company, Ltd. has not been waived.

9. That the claim of F. R. Kenney and L. W. Wickes be, and is hereby declared to be a prior and paramount lien on the property, both real and personal, described in said chattel mortgage and said deed of trust ahead of the lien of the State of California for license taxes due on account of gasoline sold and delivered by the El Camino Oil Company, Ltd. subsequent to said 10th day of June 1930 and penalties thereon.

10. That the stipulations of facts heretofore filed and memorandum of opinion filed May 8, 1936, shall be considered the findings of fact and conclusions of law within the meaning of Equity Rule 70½ (28 U.S.C.A. 723).

Dated: June 15, 1936.

Geo Cosgrave
District Judge.

Approved as to Form

U. S. WEBB,
Attorney General
By John O. Palstine
Deputy Attorney General

Attorneys for and on behalf of the People of the State
of California

Earl Glen Whitehead
Attorney for Receiver H. A. Meek

[Endorsed]: Filed Jun. 15, 1936 R. S. Zimmerman
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PETITION FOR RE-HEARING RE PRIORITY OF
LIENS OF THE STATE OF CALIFORNIA AND
F. R. KENNEY AND L. W. WICKES.

COME NOW the People of the State of California, by and through the Attorney General of said State, tax creditor in the above entitled cause, and move the Court to vacate the order heretofore entered herein on June 15, 1936, determining the priority of the liens of the State of California and of F. R. Kenney and L. W. Wickes, and respectfully pray that said cause relating to the respective claims of said parties be re-heard and re-considered for the following reasons:

I.

Because of mistakes of fact the Court made in considering the evidence, records, and files herein.

II.

Because of errors in the interpretation and application of the law into which the court was led by a misunderstanding of the facts and of the files and records herein.

III.

Because errors of law apparent upon the face of the record, and in particular because the court erred as follows:

A. In ordering that the claim of F. R. Kenney and L. W. Wickes in the sum of \$78,046.60, together with interest thereon at the rate of seven per cent (7%) per annum, compounded quarterly, from the 31st day of May, 1932, is a valid and existing claim against the receivership estate.

B. In ordering that the claim of F. R. Kenney and L. W. Wickes is secured by a chattel mortgaged dated the 6th day of June, 1930, executed by El Camino Oil Company, Ltd., and recorded in the office of the County Recorder of Los Angeles County the 10th day of June, 1930, and is secured by a deed of trust dated the 7th day of June, 1930, executed by the El Camino Oil Company, Ltd., as trustor for the Title Insurance and Trust Company, a corporation, as Trustee, in favor of F. R. Kenney and L. W. Wickes as beneficiary, and recorded in the office of the County Recorder of Los Angeles on the 10th day of June, 1930; and in ordering that said chattel mortgage and said deed of trust are valid and existing liens upon the property described in said chattel mortgage and said deed of trust.

C. In ordering that the claim of F. R. Kenney and L. W. Wickes is a prior and paramount lien on the property both real and personal, described in said chattel mortgage and said deed of trust, ahead of the lien of the State of California for license taxes due on account of gasoline sold and delivered by said El Camino Oil Company, Ltd., subsequent to the 10th day of June, 1930, and penalties thereon.

D. In failing to order that said claim of said State of California should bear interest at the rate of seven per cent (7%) per annum from the times said obligations became delinquent until the same is paid, or from the time when the receiver was appointed herein until said obligation is paid, or from the date of said order determining priority of said liens on June 15, 1936, until paid, with the same priority and lien status as of the principal obligation upon which said interest accrued.

These errors will be plainly apparent to the Court upon a review and further consideration of the record herein, and particularly upon hearing oral argument in regard to said errors, the Court not having had the benefit of such argument prior to the making of said order on July 15, 1936, the matter having been submitted upon briefs. This petition is based upon the files and records herein and upon the briefs heretofore filed herein, all of which are hereby made a part hereof as though set forth herein in full.

For the reasons herein set forth the petitioners pray that the decree of the court, determining the priority of liens of the State of California and of F. R. Kenney and L. W. Wickes be vacated and the cause relating to the respective claims of said parties be re-heard and re-considered, and that to this end the petitioners be permitted by order of this Court to file the foregoing petition, and that the Court fix a time and place for hearing upon said petition for re-hearing, at which hearing the Court may determine whether or not said petition for re-hearing shall be granted or upon what conditions, if any, said petition shall be denied.

Respectfully submitted,

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Claimant

By U. S. WEBB,

Attorney General,

John O. Palstine

Deputy Attorney General

Counsel for said Claimant.

WE HEREBY CERTIFY that the foregoing petition is in our opinion well founded in law and should be granted, and is not interposed for delay.

U. S. WEBB,

Attorney General

By John O. Palstine

Deputy Attorney General

Counsel for Petitioner.

ORDER FOR HEARING ON PETITION FOR RE-HEARING

UPON READING the foregoing petition for re-hearing and good cause therefor appearing,

IT IS HEREBY ORDERED that said petition be, and the same is hereby filed and it is further ordered that hearing thereon be had on Monday, the 20th day of July, 1936, at 10 o'clock A. M., or as soon thereafter as the matter can be heard by the Court, in the Court Room of the Honorable George Cosgrave, United States District Judge, in the Federal Building, Los Angeles, California.

IT IS FURTHER ORDERED that the petitioner, the People of the State of California, shall give five days' notice of said hearing to H. A. Meek, receiver in the above entitled proceeding, and to said F. R. Kenney and L. W. Wickes, by service of a copy of the petition upon which this order is made and a copy of the order, on each of said parties or his counsel of record herein.

DATED: Los Angeles, California, July 13, 1936.

Geo Cosgrave

UNITED STATES DISTRICT JUDGE

[Endorsed]: Filed Jul. 16, 1936 R. S. Zimmerman
Clerk By L. Wayne Thomas, Deputy Clerk.

At a stated term, to-wit: The February Term, A. D. 1936, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, Calif., on Monday, the 31st day of August, in the year of our Lord one thousand nine hundred and thirty-six.

Present:

The Honorable: GEO COSGRAVE District Judge.

J. E. Hendrickson,	Plaintiff,)	
)	
vs.	)	No. W-21-C Eq.
)	
El Camino Oil Co.,)	
Ltd., a corporation,	Defendant..)	

This cause having come before the Court on August 27th, 1936, for hearing on Petition of People of the State of California for rehearing, filed July 16th, 1936, re priority of liens of State of California and F. R. Kenney and I. W. Wickes, and having been argued by counsel and ordered submitted for decision; and the Court, having duly considered the matter, now orders as follows:

Petition of the State of California for re-hearing is denied. Exception to petitioner.

[TITLE OF COURT AND CAUSE.]

PETITION FOR APPEAL AND ORDER ALLOWING APPEAL

TO THE HONORABLE GEORGE COSGRAVE,
JUDGE OF THE UNITED STATES DISTRICT
COURT, SOUTHERN DISTRICT OF CALIFORNIA,
CENTRAL DIVISION:

The State of California, creditor and appellant herein, feeling itself aggrieved by the order of the above entitled court, dated June 15, 1936, allowing the claims of the State of California and of F. R. Kenney and L. W. Wickes, and determining the existence and priority of liens securing said claims, respectively, and feeling itself further aggrieved by the order of said court dated August 21, 1936, denying the petition of said State for a rehearing upon the matters determined by said order of June 15, 1936, and upon the matter of the right of the State of California to interest upon its claim,

PRAYS FOR THE ALLOWANCE OF AN APPEAL from said order of June 15, 1936, relating to said claims and liens, and from said order of August 31, 1936, denying said petition for rehearing, to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons specified in the assignment of errors filed herewith, and prays that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said orders were based, duly authenticated, be sent to said Circuit Court of Appeals, and prays that an

order be made fixing the amount of any bond required of appellant herein.

DATED: September 30, 1936.

U. S. WEBB,

Attorney General,

By John O. Palstine

Deputy Attorney General,

Attorneys for the State of California,
creditor and appellant.

ORDER ALLOWING APPEAL

Upon reading the foregoing Petition for Appeal, and upon the files and records herein,

IT IS ORDERED that an appeal be, and the same is hereby allowed to the State of California, to have the United States Circuit Court of Appeals, for the Ninth Circuit, review the order of this court dated June 15, 1936, relating to the claims of the State of California and of F. R. Kenney and L. W. Wickes, as creditors of the El Camino Oil Company, Ltd., a corporation, respondents herein, and relating to the existence and priority of liens securing said claims, and also to review the order of this court dated August 31, 1936, denying a petition of said State of California, for a rehearing in connection with the matters determined by said order of June 15, 1936, and

IT IS FURTHER ORDERED that citation be issued as provided by law, directed to H. A. Meek, as Receiver

of the El Camino Oil Company, Ltd., and F. R. Kenney and L. W. Wickes, creditors, as appellees, and that a transcript of the record be prepared by the clerk of this court and transmitted to the Circuit Court of Appeals, so that he shall have the same in said Circuit Court within thirty days of this date, or such further time as may be fixed by order of this court duly made and entered.

IT IS FURTHER ORDERED that cost bond in said appeal be and the same is hereby fixed in the sum of \$250.00 Dollars, the clerk to approve said bond.

DATED: September 30, 1936.

Geo. Cosgrave
District Judge.

[Endorsed]: Filed Sep. 30, 1936 R. S. Zimmerman,
Clerk by Edmund L. Smith Deputy Clerk

IN THE UNITED STATES DISTRICT COURT,
 IN AND FOR THE SOUTHERN DISTRICT
 OF CALIFORNIA, CENTRAL
 DIVISION.

.

J. N. HENDRICKSON,)	
)	
Complainant,	)	No. W-21-C.
)	
vs)	
	)	ASSIGNMENT
EL CAMINO OIL COMPANY,	)	OF ERRORS.
LTD., a corporation,)	
)	
Respondent.)	

COMES NOW the State of California, creditor and appelliant herein and respectfully urges that the above entitled court erred in making its order of June 15, 1936, relating to the claims of the State of California and of F. R. Kenney and L. W. Wickes, as creditors of the El Camino Oil Company, Ltd., a corporation, respondent herein, and relating to the existence and priority of liens securing said claims, and also erred in making its order of August 31, 1936, denying the petition of said state for a re-hearing in connection with the matters determined by said order of June 15, 1936, and presents in connection with its petition for appeal from said order, the following assignment of errors:

I.

That said court erred in ordering that the claim of F. R. Kenney and L. W. Wickes in the sum of \$78,046.60, together with interest thereon at the rate of seven per cent

(7%) per annum, compounded quarterly from the 31st day of May, 1932, is a valid and existing lien against and upon any of the property in the receivership estate.

II.

That said court erred in ordering that the claim of F. R. Kenney and L. W. Wickes, or any portion thereof, is secured by a chattel mortgage dated the 6th day of June, 1930, executed by El Camino Oil Company, Ltd., and recorded in the office of the County Recorder of Los Angeles County the 10th day of June, 1930.

III.

That said court erred in ordering that said chattel mortgage created and constitutes a valid and existing lien upon the property described in said chattel mortgage.

IV.

That said court erred in ordering that said chattel mortgage created and constitutes a valid and existing lien upon any of the property in said receivership estate.

V.

That said court erred in ordering that said claim of F. R. Kenney and L. W. Wickes constitutes a lien upon the property described in said chattel mortgage, prior and paramount to the lien of the State of California upon said property for penalties added to license taxes due on account of motor vehicle fuel sold and delivered by said El Camino Oil Company, Ltd., from and including the 1st day of April, 1930, to and including the 10th day of June, 1930.

VI.

That said court erred in ordering that said claim of F. R. Kenney and L. W. Wickes constitutes a lien upon

the property described in said chattel mortgage, prior and paramount to the lien of the State of California upon said property for license taxes due on account of motor vehicle fuel sold and delivered by said El Camino Oil Company, Ltd., subsequent to the 10th day of June, 1930, together with penalties thereon for delinquency.

VII.

That said court erred in ordering that said claim of F. R. Kenney and L. W. Wickes, or any portion thereof, constitutes a lien upon any property in this receivership estate, prior and paramount to any lien of the State of California.

VIII.

That said court erred in ordering that the claim of said F. R. Kenney and L. W. Wickes, or any portion thereof, is secured by a deed of trust dated the 7th day of June, 1930, executed by the El Camino Oil Company, Ltd., as trustor for the Title Insurance and Trust Company, a corporation, as trustee, in favor of F. R. Kenney and L. W. Wickes as beneficiaries and recorded in the office of the County Recorder of Los Angeles County on the 10th day of June, 1930.

IX.

That said court erred in ordering that said deed of trust created and constitutes a valid and existing lien, as against the State of California, upon the property described in said deed of trust.

X.

That said court erred in ordering that said deed of trust created and constitutes a valid and existing lien, as against the State of California, upon any of the property in said receivership estate.

XI.

That said court erred in ordering that said claim of F. R. Kenney and said L. W. Wickes constitutes a lien upon the property described in said deed of trust prior and paramount to the lien of the State of California upon said property for penalties added to license taxes due on the amount of motor vehicle fuel sold and delivered by El Camino Oil Company, Ltd., from and including the 1st day of April, 1930, to and including the 10th day of June, 1930.

XII.

That said court erred in ordering that said claim of F. R. Kenney and said L. W. Wickes constitutes a lien upon the property described in said deed of trust prior and paramount to the lien of the State of California upon said property for license taxes due on account of motor vehicle fuel sold and delivered by said El Camino Oil Company, Ltd., subsequent to the 10th day of June, 1930, together with penalties thereon for delinquency.

XIII.

That said court erred in ordering that said deed of trust created and constitutes a valid and existing lien upon

certain property, legal title to which was not vested in said El Camino Oil Company, Ltd., prior to the date of the order herein appointing a receiver for said corporation, but to which property the legal title was vested in other persons than either said receiver or said respondent or said F. R. Kenney and L. W. Wickes, until the legal title thereto was acquired by said receiver after his appointment as such receiver in these proceedings.

XIV.

That the said court erred in ordering that the sum of \$80,733.47 paid by said El Camino Oil Company, Ltd., on account of its obligation to the State of California, which payment was made prior to the appointment of the receiver herein, should be credited on account of the license taxes due for gasoline sold and delivered prior to and including the 31st day of March, 1930.

XV.

That said court erred in failing to order that said sum so paid by said El Camino Oil Company, Ltd., should be credited first on account of penalties added to the amount of the license taxes due for gasoline sold and delivered prior to and including the 31st day of March, 1930.

XVI.

That said court erred in failing to specify, on the basis of the facts recited in the stipulation herein, the property now in the hands of the receiver herein, to which the alleged lien of said deed of trust would attach.

XVII.

That said court erred in failing to order that the State of California is a preferred creditor of the receivership estate and as such is entitled to first distribution of property in the receivership estate not subject to liens of creditors, such distribution to be applied on account of the obligation to said state which would not otherwise be paid by the satisfaction of its lien from the property subject thereto as a paramount lien.

XVIII.

That said court erred in failing to order the allowance and payment of interest at the rate of seven per cent (7%) per annum, upon the tax claim of said state, from the times said obligations became delinquent until the *said* is paid.

XIX.

That said court erred in failing to order the allowance and payment of interest at the rate of seven per cent (7%) per per annum, upon the tax claim of said state, from the time said obligation was allowed as a proper claim herein until the same is paid.

DATED: September 30, 1936.

U. S. WEBB,

Attorney General,

By John O. Palstine

Deputy Attorney General.

Attorneys for State of California.

[Endorsed]: Filed Sep. 30, 1936 R. S. Zimmerman
Clerk, By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS that the undersigned, AMERICAN SURETY COMPANY OF NEW YORK, a corporation, duly organized and existing under the laws of the State of New York, having its principal place of business at 100 Broadway, New York City, New York, and duly authorized to transact a general surety business in the State of California, is held and firmly bound unto H. A. Meek, Receiver of El Camino Oil Company, Ltd., a Corporation, and F. R. Kenney and A. W. Wickes, Appellees, in the penal sum of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00), for the payment of which said Surety binds itself and its successors, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT

WHEREAS, lately at a regular term of the District Court of the United States for the Southern District of California, Central Division, sitting at the City of Los Angeles in said District, in a suit pending in said Court between J. N. Hendrickson, Plaintiff, and El Camino Oil Company, Ltd., a Corporation, as Respondent, being Equity No. W-21-C in Equity on the docket of said Court, an order was entered on or about June 13, 1936, determining the priority of liens of the State of California and F. R. Kenney and L. W. Wickes and on August 31, 1936, an order was entered denying the petition of the State of California for a rehearing in regard to the matters determined by the aforesaid order of June 13, 1936, and

WHEREAS, the said State of California, Appellant, has been allowed an appeal from said orders, and a citation has been issued directed to H. A. Meek, Receiver of the El Camino Oil Company, Ltd., a Corporation, and F. R. Kenney and L. W. Wickes, Appellees, citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California.

NOW, THEREFORE, if the said State of California, Appellant, shall prosecute its appeal to effect and answer all costs and damages that may be awarded against it on said appeal, if it fails to make its appeal good, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, said Surety has caused this instrument to be executed and its seal to be hereunto affixed by its duly authorized officers in the City of Los Angeles, State of California, District aforesaid, this 10th day of November, 1936.

AMERICAN SURETY COMPANY
OF NEW YORK

By A. M. Wold A. M. Wold

[Seal]

Resident Vice President

Attest: I. Taylor I. Taylor

Resident Assistant Secretary

Premium charged for this bond is \$10.00 per annum.

State of California,)
) s.s.
 COUNTY OF LOS ANGELES)

On this 10th day of November, A. D. 1936, before me, John Gurash, a Notary Public in and for Los Angeles County, State of California, residing therein, duly commissioned and sworn, personally appeared A. M. Wold personally known to me to be the Resident Vice-President and I. Taylor personally known to me to be the Resident Assistant Secretary of the AMERICAN SURETY COMPANY OF NEW YORK, the Corporation described in and that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]

John Gurash

Notary Public in and for the County of Los Angeles,
 State of California.

My Commission expires Feb. 18, 1940

I hereby approve the foregoing bond.

Dated the 16th day of Nov. 1936.

Geo. Cosgrave

Judge

[Endorsed]: Filed Nov. 16, 1936 R. S. Zimmerman,
 Clerk By Edmund L. Smith Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PRAECIPE FOR TRANSCRIPT.

TO THE CLERK OF THE ABOVE ENTITLED COURT:

YOU WILL PLEASE PREPARE A TRANSCRIPT OF THE RECORD ON APPEAL in the above entitled cause, including therein the following portions only of the record:

1. Petition for order to show cause why claim for taxes should not be allowed as a preferred claim;
2. Order to Show Cause why preferred claim of State of California for taxes should not be allowed and distribution made to said State;
3. Answer to said Order to Show Cause and said Petition;
4. Stipulated statement of facts, dated on or about April 30, 1935;
5. Stipulation as to additional facts, dated September 30, 1935;
6. Memorandum of decision, dated May 8, 1936;
7. Order determining priority of liens of the State of California and F. R. Kenney and L. W. Wickes, dated June 13, 1936;

8. Petition for rehearing re priority of liens of the State of California and F. R. Kenney and L. W. Wickes;
9. Minute Order of August 31, 1936, denying petition for rehearing.
10. Assignment of errors.
11. Petition for appeal and order allowing appeal;
12. Bond on appeal;
13. Citation;
14. Praecipe.

Dated: September 30th, 1936.

U. S. WEBB,
Attorney General

By JOHN O. PALSTINE
John O Palstine

Deputy Attorney General,

Attorneys for the State of California, Appellant.

IT IS HEREBY STIPULATED that the foregoing shall constitute the transcript of record on this appeal, and that instead of writing and copying the names and titles of the Court, complainants and defendants, and the number of the cause, the same may, in said transcript of record, be abbreviated as follows: [Title of Court and Cause]; and that there need not be included in said transcript of record the backs and endorsements which appear on the original covers, save and except the filing endorsement of the clerk.

Dated this 10th day of November, 1936.

U. S. WEBB,
Attorney General,

By:

JOHN O. PALSTINE
John O. Palstine
Deputy Attorney General

Attorneys for the State of California, Appellants.

A. Maxson Smith
Attorney for F. R. Kenney and L. W. Wicks, Appellees.

Earl Glen Whitehead
Attorney for H. A. Meek, Receiver, Appellee.

[Endorsed]: Filed Nov. 13, 1936 R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 107 pages, numbered from 1 to 107 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; petition for order to show cause why claim for taxes should not be allowed as a preferred claim; order to show cause; answer to order to show cause; stipulated statement of facts; stipulation as to additional facts; memorandum of decision; order determining priority of liens of the state of California, and F. R. Kenney and L. W. Wickes; petition for rehearing and order for rehearing; order of August 31, 1936, denying petition for rehearing; petition for appeal and order allowing appeal; assignment of errors; bond on appeal, and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certi-

fying the foregoing Record on Appeal amount to.....
 and that said amount has been paid me by the appellant
 herein.

IN TESTIMONY WHEREOF, I have hereunto set my
 hand and affixed the Seal of the District Court of the
 United States of America, in and for the Southern
 District of California, Central Division, this.....
 day of December, in the year of Our Lord One
 Thousand Nine Hundred and Thirty-six and of our
 Independence the One Hundred and Sixty-first.

R. S. ZIMMERMAN,

Clerk of the District Court of the
 United States of America, in
 and for the Southern District
 of California.

By

Deputy.

